TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 157.

THE UNION GOLD-MINING COMPANY OF COLORADO, PLAINTIFF IN ERROR,

vs.

THE ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF COLORADO.

FILED OCTOBER 6, 1875.

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1 In the supreme court of the Territory of Colorado.

Pleas before the judges of the supreme court of the Territory of Colorado, at the city of Denver, in the county of Arapahoe, at the February term of said court, held in said city on the second Tuesday of February, one thousand eight hundred and seventy-five.

Witness the honorable Moses Hallett, *cheif*-justice of said court.

JNO. W. WEBSTER, *Clerk.*

2 THE UNION GOLD-MINING COMPANY OF Colorado, plaintiff in error, *vs.* THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado, defendant in error. } Error to supreme court, Colorado Territory.

3 *Transcript of record.*

And now, on this eleventh day of February, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, there was filed in the office of the clerk of said court a transcript of record in the above-entitled cause, on appeal from the district court of the second judicial district within and for the county of Jefferson; which said transcript is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Jefferson, ss:

Pleas in the district court of the second judicial district of the Territory of Colorado, sitting in and for the county of Jefferson, at the November term, A. D. 1873, began & holden on the third Tuesday
4 of November, A. D., 1873, at the court-house in Golden, on this 26th day of November, A. D. 1873.

Present the honorable Moses Hallett, *cheif*-justice of the Territory of Colorado, assigned by law to hold the courts of the third judicial district, sitting in lieu of the honorable James B. Belford. Present also, John R. Cleaveland, clerk, by Henry Bell, deputy, for said county of Jefferson; and William Smith, sheriff of said Jefferson County.

The court met pursuant to adjournment.

At this day it is ordered by the court that the following letter of request, in virtue of which the Hon. Moses Hallett is now here in this court presiding, be filed in this court and entered of record, *with* said letter of request contains, among other things, the following in words and figures as follows, to wit:

CENTRAL CITY, *Nov.* 18, 1873.

Hon. MOSES HALLETT,
Cheif-Justice, &c.:

DEAR SIR: Being unwell and unable to hold court, I will esteem it a great favor if you will go to Golden and hold my court long
5 enough to try the case of the Rocky Mountain Nat'l Bank against the Union Gold-Mining Company.

And oblige yours, very resp't'ly,

JAMES B. BELFORD.

IN THE MATTER OF ROCKY MOUNTAIN NATIONAL Bank of Central City
vs.
THE UNION GOLD-MINING COMPANY OF COLORADO.

Attachment. Venue from Gilpin County.

Be it remembered that heretofore, to wit, on the 15th day of April, A. D. 1869, as appears from transcript of record certified to our said district court by the clerk of the district court of Gilpin County in said Territory, a certain affidavit was sworn to & filed in said cause; which said affidavit is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
Gilpin County, ss:

Joseph H. Goodspeed, being first duly sworn, says that he is the cashier and agent of the Rocky Mountain National Bank of Central City, Colorado; that the Union Gold-Mining Company of Colorado is a
6 foreign corporation, doing business under its corporate name, and that the said Union Gold-Mining Company of Colorado is justly indebted to said Rocky Mountain National Bank of Central City, Colorado, in a sum exceeding twenty dollars, to wit, in the sum of twenty-two thousand nine hundred and fourteen $\frac{77}{100}$ dollars, ($22,914.77;) that said indebtedness is for money paid out and expended by said bank for said Union Gold-Mining Company at request of said company, and for money loaned to said company by said bank, and for interest on said monies so loaned.

JOSEPH H. GOODSPEED.

Subscribed and sworn to before me this 15th day of April, A. D. 1869.
H. H. ATKINS,
Clerk of the District Court, Gilpin County.

Filed April 15, 1869.

H. H. ATKINS.

And afterwards, on the said 15th day of April, A. D. 1869, a certain bond was filed in said cause, which is in words and figures as follows, to wit:

7 Know all men by these presents that we, The Rocky Mountain National Bank of Central City, Colorado, as principal, and , as sur*i*ties, are held and firmly bound unto Union Gold-Mining Company of Colorado in the penal sum of forty-five thousand eight hundred and twenty-eight dollars and fifty-four cents, ($45,828.54,) lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated this 12th day of April, A. D. 1869.

The condition of the above obligation is such, that whereas the above-bounden Rocky Mountain National Bank of Central City, Colorado, has on the day of the date thereof prayed an attachment out of the district court of the second judicial district of the Territory of Colorado, within and for the county of Gilpin, at the suit of said bank against the estate of the above-named Union Gold-Mining Company of Colorado, for the sum of twenty-two thousand nine hundred and fourteen dollars
8 and seventy-seven cents; and the same being about to be sued out of said court, returnable on the first Tuesday of May, A. D. 1869, to the term of said court then to be holden: Now, if the said

Rocky Mountain National Bank of Central City, Colorado, shall prosecute its said suit with effect, or in case of failure therein shall well and truly pay and satisfy the said Union Gold-Mining Company of Colorado *as* such costs in said suit and such damages as shall be awarded against the said Rocky Mountain National Bank of Central City, Colorado, its executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, and all damages that may accrue to the said Union Gold-Mining Company of Colorado, by reason of any excessive levy made under any writ of attachment in said suit, then the above obligation to be void; otherwise to remain in full force and effect.

Witness our hands and seals the day and year above written.

ROCKY MOUNTAIN NAT'L BANK,
9 By J. H. GOODSPEED. [SEAL.]
I. H. POTTER. [SEAL.]
WM M. ROWORTH. [SEAL.]

Filed and approved in the district court by me, this 15th day of April, 1869.

H. H. ATKINS, *Clerk.*

Be it also remembered that heretofore, to wit, on the 15th day of April, A. D. 1869, as appears from transcript of record certified to our said district court by the clerk of the district court of Gilpin County in said Territory, a writ of attachment issued in said cause out of the office of the said clerk of the district court of said Gilpin County, which said writ of attachment is in words and figures as follows, to wit:

The people of the Territory of Colorado to the sheriff of Gilpin County, greeting:

Whereas Joseph H. Goodspeed, cashier & agent of the Rocky Mountain National Bank of Central City, Colorado, hath complained on oath to Horace H. Atkins, clerk of the district court of the second
10 judicial district, in and for the county of Gilpin, that the Union Gold-Mining Company of Colorado is justly indebted to the said Rocky Mountain National Bank of Central City, Colorado, to the amount of twenty-two thousand nine hundred & fourteen dollars and seventy-seven cents, and oath having also been made that the said Union Gold-Mining Company of Colorado is a foreign corporation, and the said Rocky Mountain National Bank of Central City, Colorado, having given bond and security according to the direction of the act in such cases made and provided:

We therefore command you that you attach so much of the estate, real and personal, Union Gold-Mining Company of Colorado, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, according to the complaint, and such estate so attached in your hands to secure, so as to provide that the same may be liable to further proceeding thereupon according to law, at a court to be holden at the city of Central, for the county of Gilpin, upon the first Tuesday of May next, so as to compel the said Union Gold-Mining Company of
11 Colorado to appear and answer the complaint of the said Rocky Mountain National Bank of Central City, Colorado, and that you also summons to be and appear at the said court on the said day of next, then and there to answer what may be objected against;

when and where you shall make known to said court how you have executed this writ, and have you then and there this writ.

Witness Horace H. Atkins, clerk of our said court, and the seal thereof, this 15th day of April, A. D. 1869.

[SEAL.] HORACE H. ATKINS, *Clerk.*

And afterwards, on the 16th day of April, 1869, the sheriff made his return of levy, which is in words and figures as follows:

TERRITORY OF COLORADO,
County of Gilpin, ss:

I have duly levied the within writ on the following-described property, to wit, *the following-described property:*

Mill-site, with the appurtenances, situated on Gregory Gulch, in
12 Mountain City, Gilpin County, and described in the year 1860 as follows, to wit:

Commencing at the westerly side of a lot of ground in Mountain City on which stands a house owned by McLean A. Smith; thence running on California street one hundred and twenty feet, more or less, to a lot occupied by William Norwood as a ten-pin alley, and extending back two hundred and fifty feet, including a lot claimed by John Harris, situated on the back of said lot, and being the same property conveyed by J. H. Kehler to M. C. Fisher, by sheriff to Ashen B. Mahand, by Ashen B. Mahand to H. A. Woods, by H. A. Woods to Morton C. Fisher, by Morton C. Fisher to Lawrence M. Pratt, by Lawrence M. Pratt and wife to Horace H. Atkins, by Horace H. Atkins to Lawrence M. Pratt, by said Lawrence M. Pratt & wife to H. N. M. C. of Col., together with the mill-building on described mill-site, with the engine & boiler in said mill, and all fixtures and appurtenances thereto belonging.

Also the following-described parcel of land in Gregory Gulch, in said Gilpin County, described in June, A. D. 1864, as follows, to wit:

The undivided one-half part of a certain piece and parcel of land
13 situated in Gregory Gulch, Mountain City, (formerly so called,) being one hundred feet square, one-half of said being situated on each side of said gulch and adjoining a lot formerly owned by Andrew Lyon on the west, and running back on the north to the mountain, and bounded on the east by a lot, with a house thereon erected by G. B. Beals, and since claimed by J. H. Kehler, said property being the same claimed by Cook and Stones in 1859, and recorded by them as a mill-site May 28, 1860, in book C, page 144 of Gregory record.

Also, three gulch-mining claims, in said Gilpin County, one hundred feet each, beginning at a point in Mountain City, twenty-five feet above where the Bates Lode crosses Gregory Gulch, and thence running down said Gregory Gulch three hundred feet, by width extending from bank to bank of said gulch, including the buildings and building-lot thereon.

Also, the following parcel of land, mill-site, water privileges, and building-lots on Gregory Gulch, said county, and described as follows, to wit:

Commencing twenty-five feet east of the point where the Bates Lode crosses said Gregory Gulch, and running thence down said Greg-
14 or. Gulch, being two hundred feet square from and below the point began at aforesaid.

Also, a certain house and lot in Central City, said county, and described, June 6th, 1864, as follows, to wit:

A certain house and lot in Central City, the same being the one next east of and adjoining the Verandah Hotel, and said lot being twenty

feet front by one hundred feet deep, and more particularly described and bounded as follows, to wit:

On the north by High street; on the east by a lot owned by James H. Mallary; on the south by Laurence street; on the west by the lot on which stands the Verandah Hotel.

Also, the following-described mining property, situated in Gregory mining district, in Gilpin County, and described as follows:

Three claims, each of one hundred feet, on the Bates Extension Lode, and numbered 5, 6, 7, N. east from Discovery Claim.

Also, two claims, each of one hundred feet and two hundred feet on the Bates Lode, and numbered 1, 2, west from Discovery.

Also, Nos. 1 & 2, 3 & 4, N. E., on the Steinberger Lode; 1, 2, 3, 4, 5, S. W., on the Hunter Lode; Nos. 1, 5, 12, 14, W., Mammoth
15 Lode; Discovery, 1 E., & 1 W., Otes Lode; Nos. 20, 21, 22, W., Briggs Lode, all in Gregory district.

Also, one building-lot, situated in Central City, and described as being the lot bought by J. S. & E. S. McGlashan of John Dudley, and sold by J. S. & E. S. McGlashan to Fisher H. Buckman, and being twenty-five front and one hundred deep, and bounded on the by house formerly known as the City Bakery, and on the east by house owned by Dailey.

Also, all buildings, machineries, and ores in said building on said Bates Lode, belonging to said Union Mining Company of Colorado.

All of the above property situated, lying, and being in Gilpin County, Colorado Territory, and taken as the property of the Union Mining Company of Colorado.

Central City, April 14th, 1869.

No president or agent found in the county.

Ret., .05c.

CHELTON M. GRIMES,
Sheriff of Gilpin County.

Sheriff's fees: Service, 1.50; levy, 2.00; certif/icate, 2.00; milage, return, .75—$6.75.

Filed May 30, 1869.

H. H. ATKINS, *Clerk.*

16 And afterwards, on this 27th day of May, A. D. 1869, the said plaintiff, by his attorneys, Teller & Johnson, filed his declaration in said cause in the office of the said clerk of the district court in and for the county of Gilpin, as appears from transcript of record certified to by said clerk, which said declaration is in words and figures as follows, to wit:

In the district court of the second judicial district of Colorado Territory, within and for the county of Gilpin, of the May term, A. D. 1869.

TERRITORY OF COLORADO,
County of Gilpin, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, Colorado, plaintiff,
vs.
UNION GOLD-MINING COMPANY OF COLORADO, defendant.

Rocky Mountain National Bank of Central City, Colorado, plaintiff in this suit, by Johnson & Teller, attorneys, complain of Union Gold-

Mining Company of Colorado, which is a' incorporat*ion* company,
17 defendant, who is summoned, &c., in a plea of trespass on the case on promises: For that whereas the said defendant, heretofore, to wit, on the 18th day of December, in the year of our Lord one thousand eight hundred & sixty-eight, at Gilpin County, to wit, at Central City, in said county of Gilpin, became and were indebted to this plaintiff in the sum of twenty-one thousand two hundred and seventeen dollars and six cents, for money before that time loaned & advanced to said defendant by said plaintiff at request of defendant, & for interest then due & payable from defendant to plaintiff upon the forbearance and use of divers large sums of money before then due and owing from said defendant to the plaintiff, & by plaintiff forebourne with said defendant for divers long space' of time before then elapsed, at request of defendant, and being so indebted, said defendant, in consideration thereof, undertook & then and there promised this plaintiff to pay it said sum when thereunto requested; yet, though often requested, said de-
18 fendant has not paid the same, or any part thereof, to plaintiff's damage thirty-five thousand dollars, ($35,000.)

And whereas also the said defendant afterwards, to wit, on the 1st day of April, A. D. 1869, at, to wit, *at* said county of Gilpin, became indebted to said plaintiff in the further sum of thirty-five thousand dollars for goods sold and delivered by the plaintiff to the defendant at its request, and in the further sum of thirty-five thousand dollars for work done and materials for the same provided by the plaintiff for the defendant at its request; and in the further sum of thirty-five thousand dollars for money lent by the plaintiff to the defendant at its request; and in the further sum of thirty-five thousand dollars for money paid by the plaintiff for the use of the defendant at its request; and in the further sum of thirty-five thousand dollars for money received by defendant for the use of the plaintiff; and in the further sum of thirty-five thousand dollars for interest for the forbearance by the
19 plaintiffs at defendant's request of money due and owing from the defendant to the plaintiff; and in the further sum of thirty-five thousand dollars for money found to be due from the defendant to the plaintiff on an account stated between them. And the defendant afterwards, on the day and year last aforesaid, in the county aforesaid, in consideration of the last-mentioned promises respectively, then and there promised the plaintiff to pay the said last-mentioned several monies respectively to the plaintiff on request.

BREACH.—And yet said defendant, not regarding its said several promises and undertakings, has not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff, though often requested so to do, but the said defendant to pay the plaintiff the same has hitherto wholly neglected and refused, and still does neglect and refuse, to the damage of said plaintiff of thirty-five thousand dollars; and therefore it sues, &c.

JOHNSON & TELLER,
Plaintiff's Attorneys.

20 Declaration filed in my office this 17th day of April, 1869.
H. H. ATKINS, *Clerk.*

Union Gold-Mining Co., G. K. Sabin, agent, in account with Rocky Mountain Nation'l Bank of Central City, Col.

D'R.				C'R.			
1867.							
Mar. 18			275	Mar. 30			443 75
25			168 75	Apr. 30	Gold 2		500
April 9			250	May 31	do 3		500
13			12	June 5	317 20-100 oz. gold		621 20
15			250	10	Gold		761 25
16			900				
18			138				
22			26				
23			250				
29			275				
May 2			50				
3	50, 110, 276.36		436 36				
4	800, 98		898				
7	275, 200		475				
9			50				
10			12				
13			225				
14			421				
16	40, 378, 8.50		416 50				
21 20	50, 275		325	1867.	Forward		
21	24.50, 36, 30		90 50	June 18	65.65 ozs. gold		1, 378 65
22			35 00	25	37¼ " "		787 50
23			49 00	29	Am. on gold		1, 000 00
28			275 00	July 1	26 20-100 oz. gold		550 20
June 1			52 00	2	22 75-100 " "		477 75
3			195	8	49 75-100 " "		1, 044 75
4	116, 14.65, 272.50, 861, 219		1, 423 15	15			672
5	171.50, 6,000 coin gold		6, 221	16			516 60
6			10	23			1, 410 15
7			269	30			486 15
11			225	31			379 47
				Aug. 6			1, 237 90
	For'd		14, 698 26				
June 13	25.50, 50		75 50				
19	350, 65		415				
24	75, 698, 313.50		1, 086 50				
25	98, 200, 150		378				
26	70, 90		160				
28			50				
29			50				
July 1	7, 1069, 1102, 175, 20		2, 373				
2	400, 58, 13, 142, 75, 90, 32, 1000, 165, 90, 21, 40, 122.75.		1, 946 44				
3	64.60, 92.85, 183.80, 116.55		455 80				
5	5.50, 50, 295, 130.25		460 75				
8			212 50				
9			247 50				
22 10	75, 150		225				
				1867.			
July 15			212 50				
16	36, 12		48				
17	292.50, 14.60, 38.50, 642		989 60				
19			58 50				
22	50 by		117				
23	315, 300		615				
24	25, 50		75				
25			22 20				
27	2, 3		5				
30			125				
31			13				
Aug. 1	920.25, 10		931 25				
2	150, 175, 95.05, 2.40, 246.43, 25, 31.50, 28.75.		754 13				
3	59, 278, 14.10		351 10				
5	13.50, 238		251 50				
6	60, 275		335 00				
	Forward		29, 813 03				20, 787 32
Aug. 8			10	Aug. 12			982 80
10			75	16	13 12-100 oz. gold		275 52
14			13	19			777
12			275	Sept. 2	122.90 gold		2, 580 90
16			167 76	9	"		953 40
19	75, 925, 300		1, 296	10	"		585 90
20			12	17	"		1, 122 40
21			52	24	"		493 92
23			249 90	24	"		900 90
23 26	52.50, 220		472 50	"	"		346 50
27	10, 50, 37.50, 75, 275		450 50	Oct. 2	"		645 75
28			25				
29			100 45				

Sept.	2	49.70, 75, 700, 12.25, 275, 91	1,202 95
	3	90, 23, 303, 18.25, 50.25, 398.50, 122.50, 29.50, 656, 162.	1,302 95
	4		49
	5	34.35, 52.70, 87.50, 138.75	313 27
	6		46 68
	10	100, 300, 13	413
	11		42
	13		200 00
	14		70
	19		50
	20		12
	23	40, 1000.75, 145	1,275 75
	24	287.50, 225	512 50
	26		12
	28		70
	30	300, 262.50, 75	637 50
Oct.	1	654, 422	1,076
"	2	36, 36.90, 52, 120, 159	403 90
		Forward	38,483 64
	3	4.45, 10.90, 441, 20.50, 89.25	566 10
	5	36, 125, 10, 188.50	1 50
	8	16, 262.50	359 50
	9		278 50
	10	75, 280	190
24	14	30, 262.50	355
	16		292 50
	21		4 25
	22	206.25, 1085.50	160
	23	28.40, 15	1,291 75
	24		43 40
	26		129 50
	28	30.90, 50	40
	31		80 90
	31		22 50
Nov.	2	93, 303.35, 123, 145.10, 102, 6, 6	778 45
	4	44.96, 34, 102.50, 807.62, 636.75, 11.	1,636 83
	4	5.50, 36.86, 165.35, 81	288 65
	5	90, 96.25, 252.50, 1	439 79
	6		21
	7	2.50, 20, 14.60	37 10
	9		60
	11	138.20, 120	258 20
	12	315, 685, 50, 8.75	1,058 75
	18		100
	19		148
	21		75
	22		84 50
	26		152
		Forward	47,437 31
Dec.	2	92.25, 771.25, 2,177, 114, 14.25, 87.	3,256 25
"		9.09, 24.25, 7, 6.10, 100	146 44
	3	8.25, 361.75, 26.30, 15, 149.50, 65.10.	625 90
25	3	116, 8.75, 10.50 162, 117.49	414 74
	4	55.20, 30, 121.35, 50, 29.75	285 80
	6		12 25
	7		100
	9	100, 65	165
	10		190
	11	200, 8.95	208 95
	14	37, 19.25, 41.25	97 50
	17	164, 50	214
	20		1,900
	21		200
	23	200, 154, 50, 60	464
	24	25, 15	40
	27		2
	28		93
	30	49, 30	79
	31	109.50, 50	159 50
		Balance	56,091 64
1868.			
January	1	Balance	4,687 78
	2	9, 56.20	65 20
	4		503 35
	6	175, 261.50, 2512.50, 431.80, 896	4,276 80
	7	261, 6.85, 1, 12.50, 65, 87, 10.20, 111.45.	555
	8	200, 103, 50	353
	9	40, 18, 64.95, 4.30, 32.50	159 75

		Forward	36,451 35
Oct.	8	Gold	406 35
"	"	"	1,033 41
	22	"	2,335 10
	30	"	2,167 20
Nov.	5	"	1,697 85
Nov.	19	Gold	3,783 15
		Forward	44,874 41
Dec.	4	160.25 oz. gold	3,365 25
	18	158.2 " "	3,164 20
		Balance.	
		Forward	54,403 86
		Balance	4,687 78
			56,091 64
1868.			
Jan.	2	152 41.00 oz. gold	3,043 20
	2	217 " "	4,340
Feb.	3	73.65 " "	1,473 10
	4	48 05.00 " "	961
	5	49 82.00	996 40
	10	24 " "	480
	12	31 45 " "	734 05

	10	140, 7.50	147 50		"	99 " "	1,980
	13		75		18	29.18 " "	403 20
26	1868.				1868.		
	14	92, 50	142 00	Feb.	19	149 oz. gold	3,167
	17		15				
	20	50, 106	156				
	22		297				
	27		63 75				
	28	178, 50, 20	248				
	30		105				
Feb.	1	50, 2843.25	2,893 25				
	3	220, 39.98, 16.25, 1,021, 426, 76.90.	1,800 13				
	4	450.50, 14.25, 737, 16, 129, 295.42.					
	"	44.85, 159.25	1,846 70				
	5	36.75, 30	66 75				
	6	53.20, 10.50, 51	144 70				
	7		155 20				
	10	141, 20	161				
	11	140, 245	385	Feb.	25	149 oz. gold	3,129
	12		367		26	18.84 " "	395 64
	15		80		"	47.47 " "	986 87
	17		242 70		"	96.21 " "	2,020 20
	18		130	Mar.	2	Teats gold	373 38
	20		604 50	"	3		1,288 40
	21	1,500, 17.95	1,517 95		4	51.10 oz. gold	1,022
	22		30		16	106.35 " "	2,127
	26	173, 136, 269.26, 93.90	677 80		25	82.40 " "	1,648
	27	330, 1,347.50	1,677 50	April	4	134.35 " "	2,687
	29		25 00		20	150½ " "	3,010
	Mar. 2	186.26, 268, 817.50, 2,992.87	4,265 07		28	6.35 " "	102
27	3	233.60, 19.25, 71, 100, 380.26	606 55	April	30	86.11 oz. gold	1,722 20
	4	5.50, 2, 45.41, 659.1, 34, 5	751 12				
	5	3.50, 236.50, 9.68, 53.56	303 10				
	6	12.90, 2.10	15				
	7	12.90, 70, 173.65	256 55				
	9	130, 4, 43	177				
	10		49 53				
	12		15 00				
	16	39.50, 15, 138, 290	482 50				
	19		65 10				
	20		767 50				
	23	75, 10	85				
	24		5				
	30		251				
Apr.	1		192				
	2	138.39, 22.62, 13.25, 5.40	179 66				
	3		8				
	4	50, 15	65	May	18	110.65 oz. gold	2,213
	6	1,003.10, 100, 2,279.25, 15.30, 140.70.	4,038 95	"	30	132.42 " "	3,124 61
	7		432 16	June	9	104.90 " "	2,150 45
	8	15, 100	115	"	17	76.37 " "	1,565 58
	9	11.36, 154	165 36				
	11	7, 47.35, 75	129 35				
	14	12.50, 170	182 50				
	18	25, 45	70				
	20	148, 136.50	284 50				
	23		200				
	25		100				
28	27	7.50, 177.30	184 80				
	28	104, 130.38	234 38				
May	1	995.50, 60, 15.50, 60.65, 26.67, 2.260.	3,398 32				
	2	351.50, 142	493 50				
	4	38, 24.30, 20, 186, 44	312 30				
	6	130, 18.05, 50	198 05				
	7		6				
	9		100				
	11	923, 54, 15	992				
	12	124, 150	274 00				
	14		48 90				
	20		105				
	25		26				
	26		248				
	27		50				
	28		36 25				
June	1	2,075, 81.25, 40.20, 167.33, 3,385.65.	2,782 43	June	29		218 92
	2	2,884.24, 10, 27.65, 68.38, 184	1,176 27	July	3	165 oz. gold	3,402 95
	"	198, 25	223		13		50
	3	176.56, 44.30, 10, 20, 3, 4.25	258 05		31	168.93 gold	3,380 85
	4	40, 66, 62, 22	190	Aug.	1	62	1,286 50
	6	27, 2.75	29 75		10	91.90 "	1,975 85
	8	16.35, 10, 24.05, 18.45	68 85		11	62.25	1,338 37

	10		116 50
			10
	12		66 50
	15		70
	16		244 02
20	17		326
	22		24 83
	24	20 @ 25	25 25
	27		113
	29	60, 10, @ 50	75 40
July	1	100, 150	250
	2	125, [illegible]	[illegible]
	6	112, 202, 10	324 50
	7	21, 18, 34, 50, 10, 50, 173, 44, 83	629 77
		188, 25, 83, 10, 40, 50, 4, 50	76 58
	8	174, 10, 15, @ 10	205 25
	10		50
	11	65, 30, 36, 05	101 35
	14	50, 150	200
	16	10, 140	150
	20		40
	24		15
	25		175
Aug.	1	934 50, 50, 18, 65, @6, 239, 112 30, 13 @5.	1, 453 70
	"	2,763 50, 472 50	3, 236
	3	317 32, 20, 26, 150, 19 25, 61 57,	594 14
	"	148 88, 13 44, 14 48, 56 75, 290 25, 66, 374 25.	994 35
	4	41, 4	45
	5	7, 10, 1 75	18 75
	7		200 00
	8	301, 300	601
	10	5, 126, 13 50, 151, 5, 26	325 50
	11	8, 503 25	511 25
30	12		10
	15	331 25, 400	731 25
	17	151 50	151 50
	18	393 75, 20	413 75
	27		205 71
	29		200
		Ford	6, 702 03
	31	3, 25, 240, 92 50	360 50
Sept.	1	65 @ 50, 24 50, 2, 270, 2, 10, 32 65, 280,	3, 773 65
	2	200, 20 65, 7 15, 1 @ 25, 40 80, 138 25, @1 35, 324 75, 3, 26 75, 276 37, 18, 201	1, 612 02
	3	20 53, 70, 3 55, 130, 23 50	256 50
	4		350 50
	5		250
	7	@ 144 50	280
	8	267, @ 75, 67 50	343 25
	9		5
	10		33
	14	25, 300	325
	17	350, 63	413
	19		75
	21		54
	26	10, @ 12	130
Oct.	5	124, 12 15, 174, 1, 828, 254, 54 @ 60	4, 247 75
	6	12 40, 54 25, 200, 70, 2, 147 25, 45, 6, 55, 74, 38 @ 26, 14 25.	911 @6
	7	28, 91 50, 93, 72	284 50
31	8	385, 42 50	427 50
	9	208 37, 60, 96	454 50
	13	297 25, 350, 14 25, 28	689 50
	15		21 50
	17		150
	24	85, 36	121
Nov.	3	125, 2, 779 50, 647 20, 16, @5, 158, 286,	4, 073 70
	4	9 20, 54, 120, @2 96	281 66
	5	202 30, 122, 174 80	559 10
	6		162
	7		15
	"		28 @0
	13		507
	17		40 25
	18		340 00
	19		4 50
	24	11 25, 150	161 25
Dec.	2	821 24, 17 50, 2, 024 50, 38 50	3, 504 74
	3	155, 270, 60, 2, 144 @	631 @
	4	18, 316 80, 20, 60, 45, 10	470 @0
	15	76 10	1, 674 20

Sept.	1	25 65 gold	564 30
"	"	26 10 "	1, 074 20
"	4	30 10 "	662 20
Oct.	5	117 50 "	2, 407 75
	5		2
Nov.	2		2, 005 20
	9		1, 283 60
	18	103 oz gold	1, 960
Dec.	14	97 20 "	2, 114
"	26	194 50 @ 9 10, 1663 50	1, 857 70
"	29	32 05 oz	642 52
	30	14 30 "	276 60
		Balance	21, 217 06

5	415 25/100 40 207 50	716 94	
7	150 133 27/100 15 20/100 43 00	370 06	
16		5 25	
18		450 55	
"	17 50/100 21 50	39	
26	1 185 50/100 250	1,435 50	
31		100	
		36,665 13	36,665 13

32 Filed May 27th, 1869.

H. H. ATKINS, *Clerk.*

And afterwards, to wit, on the 30th day of June, A. D. 1869, an alias writ of attachment was issued, and the said alias writ of attachment is in words and figures as follows, to wit:

The people of the Territory of Colorado to the sheriff of Gilpin County, greeting:

Whereas Joseph H. Goodspeed, cashier & agent of the Rocky Mountain Nat. Bank of Central City, Colorado, hath complained on oath to Horace H. Atkins, clerk of the district court of the second judicial district, in and for the county of Gilpin, that the Union Gold-Mining Company of Colorado is justly indebted to the said Rocky Mountain National Bank of Central City, Colorado, to the amount of twenty-two thousand nine hundred & fourteen dollars and seventy-seven cents, and oath having also been made that the said Union Gold-Mining Company of Colorado is a foreign corporation, and the said Rocky Mount-
33 ain National Bank of Central City, Colorado, having given bond and security according to the direction of the act in such case made and provided:

We therefore command you, as we have before commanded you, that you attach so much of the estate, real and personal, of the said Union Gold-Mining Company of Colorado to be found in your county as shall be of value sufficient to satisfy the said debts and costs, according to the complaint, and such estate so attached in your hand to secure so as to provide that the same may be liable to further proceedings thereupon according to law at a court to be holden at the city of Central for the county of Gilpin, upon the first Tuesday of November next, so as to compel the said Union Gold-Mining Company of Colorado to appear and answer the complaint of the said Rocky Mountain National Bank of Central City, Colorado, and that you also summons as a garnishee, to be and appear at the said court on the said day of next, then and there to answer what may be objected against; where and when you shall make known to said court how you have executed this writ.

34 Witness Horace H. Atkins, clerk of our said court, and the seal thereof, this 30th day of June, A. D. 1869.

[SEAL.] HORACE H. ATKINS, *Clerk.*

And afterwards, on 6th day of July, A. D. 1869, the sheriff made his returns of levy and return of service of summon on Theodore H. Becker, president, the 30th June, 1869, as appears from transcript record, and said return is in words and figures as follows:

TERRITORY OF COLORADO,
County of Gilpin, ss:

I have duly levied the within writ on the following-described property, to wit:

The following-described property, mill-site, with the appurtenances, situated in Gregory Gulch, in Mountain Gilpin County, and described in the year 1860 as follows, to wit:

Commencing at the westerly side of a lot of ground in Mountain City, on which stands a house owned by McLean and Smith; thence running on California street one hundred and twenty feet, more
35 or less, to a lot occupied by William Norwood as a ten-pin alley, and extending back two hundred and fifty feet, including a lot claimed by John Harris, situated on the back of said lot, and being the same property conveyed by J. H. Kehler to M. C. Fisher; by sheriff to Ashen B. Mahard; by Ashen B. Mahard to H. A. Woods; by H. A. Woods to Morton C. Fisher; by Morton C. Fisher to Lawrence M. Platt; by Lawrence M. Platt & wife to Horace H. Atkins; by Horace H. Atkins to Lawrence M. Platt; by said Platt & wife to U. N. M. C. of Col., together with the mill building on described mill-site, with the engine and boiler in said mill, and all fixtures and appurtenances thereto belonging.

Also the following described parcel of land in Gregory Gulch, in said Gilpin County, described in June, A. D. 1864, as follows, to wit:

The undivided one-half part of a certain piece and parcel of land situated in Gregory Gulch, (Mountain City, formerly so called,) being one hundred feet square, one-half of same being situated on each side of said gulch, and adjoining a lot formerly owned by Andrew Lyon
36 on the west, and running back on the north to the mountain, and bounded on the east by a lot with a house thereon, erected by G. B. Beals, and since claimed by J. H. Kehler, said property being the same claimed by Cook and Stones in 1869, and recorded by them as a mill-site May 28th, 1860, in book C, page 144, of Gregory records.

Also three gulch-mining claims in said Gilpin County, one hundred feet each, beginning at a point in Mountain City twenty-five feet above where the Bates Lode crosses Gregory Gulch, and thence running down said Gregory Gulch three hundred feet, by width extending from bank to bank of said gulch, including the building and building-lot thereon.

Also the following parcel of land, mill-site, water-privileges, and buildings-lots, in Gregory Gulch, said county, and described as follows, to wit:

Commencing twenty-five feet east of the point where the Bates Lode crosses said Gregory Gulch, and running thence down said Gregory Gulch, being two hundred feet square from and below the point
37 began at aforesaid.

Also a certain house and lot in Central City, said county, and described June 6th, 1864, as follows, to wit:

A certain house and lot in Central City, the same being the one next east of and adjoining the Verandah Hotel, and said lot being twenty-five feet front by one hundred feet deep, and more particularly described and bounded as follows, to wit:

On the north by High street, on the east by a lot owned by James H. Mallory, on the south by Lawrence street, on the west by the lot on which stands the Verandah Hotel.

Also the following-described mining property, situated in Gregory mining district, in Gilpin County, and described as follows:

Three claims, each of one hundred feet, on the Bates Extension Lode, and numbered 5, 6, 7, N. east from discovery claim; also two claims, each of one hundred feet, and being two hundred feet on the Bates Lode, and numbered 1 & 2, west from discovery; also 1 & 2, 3 & 4, N. E., on the Steinberger's Lode; 1, 2, 3, 4, 5, S. W., on the Hunter
38 Lode; 1, 5, 12, 14, W., Mam'oth Lode; discovery, one east, one west, Otes Lode; Nos. 20, 21, 22, W., Briggs Lode; all in Gregory district.

Also one building-lot, situated in Central City, and described as being the lot bought by J. S. & E. S. McGlashan of John Dudley, and sold by J. S. E. S. McGlashan to Fisher H. Buckmont, and being twenty-five feet front and one hundred feet deep, and bounded on the west by house formerly known as the City Bakery and on the east by house owned by Dailey.

Also all buildings, machinerys, and ores in said buildings on said Bates Lode belonging to said Union Mining Campany of Colorado; all of the above property situated, lying, and being in Gilpin County, Colorado Territory, and taken as the property of the Union Mining Company of Colorado.

Central City, this 30th day of June, A. D. 1869.

CHELTON M. GRIMES,
Sheriff of Gilpin County.

And I have also further levied the within writ on twenty-five
39 cords of first quality of Bates ore taken out of the said claims, levied on said lode and in shaft and shed situated on said lode, this 6th day of July, A. D. 1869.

CHELTON M. GRIMES,
Sheriff of Gilpin County.

I, Chelton M. Grimes, sheriff of Gilpin County, do hereby certify that I served the within writ by reading and delivering a true copy of the same and leaving it with Theodore H. Bicker, president or agent of said company in Gilpin County, Colorado, on the 30th day of June, A. D. 1869.

CHELTON M. GRIMES,
Sheriff of Gilpin County.

Sheriff's fees: Service, 1.50; levying, 4.00; certificate, 2.00; mil'age, 20; return, 75—8.45.

Filed Sept. 27th, 1869.

H. H. ATKINS, *Clerk.*

40 And afterwards, to wit, the defendant, by his attorneys, Hugh Butler & E. Wakely, esq's, filed, on the 8th day of November, A. D. 1869, with the clerk of the district court in and for Gilpin County, Territory aforesaid, as appears from transcript of record certified to our said district court of Gilpin County, affidavit of Theodore H. Bicker; and also filed, as aforesaid, motion to dismiss the aforesaid suit.

And afterwards, on the 11th day of November, A. D. 1869, the defendant filed, as aforesaid, motion to quash the writ of attachment; which said affidavit & motions are in words and figures as follows, to wit:

And afterwards, to wit, on the 11th day of November, 1869, the plaintiff, by attorneys, Johnson & Teller, filed in said court, as aforesaid, an amended bond, which said amended bond is in words and figures as follows, to wit:

41 In district court of Gilpin County aforesaid.

TERRITORY OF COLORADO,
County of Gilpin, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Nov. Term, 1869.

Theodore H. Becker, being first duly sworn, deposes and says, that he is the president of the above-named defendant; that the above-named plaintiff claims to be a corporation that is not incorporated under any laws of the Territory of Colorado, and that it was not created under any act of the legislature of the Territory of Colorado, and that if the said plaintiff is an incorporated body it was incorporated as created by some law or authority other than the Territory of Colorado.

THEODORE H. BECKER.

Subscribed and sworn to before me this 8th day of Nov., 1869.

H. H. ATKINS,
Clerk of District Court.

Affadavit filed Nov. 8, 1869.

H. H. ATKINS, *Clerk.*

42 The district court of Gilpin County aforesaid.

TERRITORY OF COLORADO,
County of Gilpin, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Nov. Term, 1869.

And now comes the said defendant by E. Wakely and Hugh Butler, its attorneys, for the purpose of this motion only, and moves the court to dismiss this suit, for the following reasons, to wit:

Because it appears from the affadavit of Theodore H. Becker, filed herewith, that the said plaintiff is a foreign corporation and is not a resident of the Territory of Colorado, and no bonds for costs was filed before the commencement of said suit as required by statutes.

E. WAKELY,
HUGH BUTLER,
Def't Att'ys.

Motion filed Nov. 8th, 1869.

H. H. ATKINS, *Clerk.*

43 The district court of Gilpin County aforesaid.

TERRITORY OF COLORADO,
County of Gilpin, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO,
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Nov. term, A. D. 1869.

And now comes the said defendant, by Hugh Butler and E. Wakely, its attorneys, for the purpose of this motion only, and moves the court to quash the writ of attachment herein, for the following reasons, to wit:

1st. Because there is no sufficient attachment-bond, as required by statute.

2nd. Because the penalty of said bond is insufficient.

3d. Because the recitals in said bond are incorrect.

4th. Because said bond is not properly executed.

5th. Because the names of the sureties are not mentioned in said bond.

HUGH BUTLER &
44 E. WAKELY,
Def't's Att'ys.

Motion filed Nov. 11, 1869.

H. H. ATKINS, *Clerk.*

Know all men by these presents, that we, Joseph H. Goodspeed, cashier & agent of the Rocky Mountain National Bank of Central City, Colorado, as principal, and Timothy M. Roworth, Henry M. Teller, as sur/ties, are held and firmly bound into the Union Gold Company of Colorado, in the penal sum of forty-five thousand eight hundred and twenty-nine dollars & fifty-four cents, lawful money of the United States, for the payment of which said sum well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents. Witness our hands and seals this 11th day of Nov., A. D. 1869.

The condition of the above obligation is such, that whereas the above-bounden Joseph H. Goodspeed, cashier and agent of the said
45 Rocky Mountain National Bank of Central City, Colorado, did on the 13th day of April, 1869, pray an attachment out of the district court of the second judicial district of the Territory of Colorado, within and for the county of Gilpin, at the suit of the said Rocky Mountain National Bank of Central City, Colorado, against the estate of the above-named Union Gold-Mining Company of Colorado, (an incorporated company,) for the sum of twenty-two thousand nine hundred and fourteen dollars & seventy-seven cents, ($22,914.77.) & the same having been sued out of said court on the 15th day of April, A. D. 1869, returnable on the first Tuesday of May, 1869, to a term of said court then to have been held:

Now, if the said Rocky Mountain National Bank of Central City, Colorado, shall prosecute their said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Union Gold-Mining Company of Colorado all such costs in said suit, and such damages as shall be awarded against the said Rocky Mountain National
46 Bank of Central City, Colorado, its successors, executors, admin-

istrators, in any suit or suits which may hereafter be brought for unlawfully sueing out said attachment, and all damages that may accrue, or that may have accrued, to the said Union Gold-Mining Company of Colorado by reason of any excessive levy under any writ of attachment in said suit, then the above obligation to be void; otherwise to remain in full force and effect.

Witness our hands and seals the day & year above written.

JOSEPH H. GOODSPEED, [SEAL.]
Cashier & Agent of the Rocky Mountain National Bank, [SEAL.]
Central City, Colorado.
TIMOTHY N. ROWORTH. [SEAL.]
HENRY M. TELLER. [SEAL.]

Approved and filed Nov. 11th, 1869.

H. H. ATKINS, *Clerk.*

17 And afterwards, to wit, defendant' by their said attorneys filed their pleas in said court on the 16th November, A. D. 1869, in said district court, as appears from transcript of record certified as aforesaid, and is as follows, in words and figures, to wit:

In district court of 2 judicial district in and for said county, of the November term, A. D. 1869.

TERRITORY OF COLORADO,
County of Gilpin, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, Colorado, pl'ff,
vs.
UNION GOLD-MINING COMPANY, OF COLORADO, def't.
} In assumpsit. Plea: general issue.

And the said defendant, The Union Gold-Mining Company of Colorado, by Hugh Butler & E. Wakely, its attorneys, comes and defends its wrongs and injury done it, and says that it did not undertake and promise in manner and form as the said Rocky Mountain National Bank of Central City, Colorado, its said plaintiff, hath above thereof complained
18 against it, & of this it puts itself upon its country.

H. BUTLER & E. WAKELY,
Def't's Att'y.

And, for a further plea in this behalf, the said defendant, by leave of the court here for that purpose first had and obtained, according to the form of the statutes in such case made and provided, says that the said plaintiff ought not to have or maintain its aforesaid action thereof against it, this said defendant, because it, the said defendant, says that the said plaintiff was not, at the commencement of this action, & is not now, a corporation, as by the said writ & declaration is above supposed, and of this the said defendant puts itself upon its country, &c.

H. BUTLER & E. WAKELY,
Def't's Att'ys.

And, for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statutes in such case made and provided, says that

49 the said plaintiff ought not to have or maintain its aforesaid action thereof against it, the said defendant, because it, the said defendant, says that the said plaintiff is a body-corporate, formed, organized, and existing with a nominal capital of fifty thousand ($50,000) dollars, and with but only thirty thousand ($30,000) dollars actually paid in capital stock, & under and by virtue of the banking-laws of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864; and it, the said plaintiff, had no authority, right, or power to loan and advance to this said defendant this said sum of money, as in said plaintiff's declaration mentioned, and of this the said defendant puts itself upon the country.

H. BUTLER & E. WAKELY,
Def't's Att'ys.

And, for a further plea in this behalf, the said defendant, by leave of the court here for this purpose first *and had* obtained, according
50 to the form of the statutes in such case made and provided, says that the said plaintiff ought not to have or maintain its aforesaid action thereof against the said defendant, because it, the said defendant, says that the said plaintiff is a body-corporate, formed, organized, and existing with a capital stock of fifty thousand (50,000) dollars, and under and by virtue of the laws of the United States, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and it has no right, power, or authority to loan and advance to said defendant the said sum of money in said plaintiff's declaration mentioned, and this the said defendant is ready to certify; whereupon it prays judgment.

H. BUTLER & E. WAKELY,
Def't's Att'ys.

And, for a further plea in this behalf, the said defendant, by leave of the court here for that purpose first had and obtained, accord-
51 ing to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain its aforesaid action thereof against this said defendant, because it says that the said plaintiff is a body corporate, formed, organized, and existing under and by virtue of the law of the United States, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation & redemption thereof," approved June 3d, 1864.

Whereby, as by which said law of Congress it was among other things provided that associations for carrying on the business of banking might be formed by any number of persons not less than five, (5,) who should enter into articles of association, specifying in general terms the object for which the association was formed, and might contain any other provisions not inconsistent with the provisions of said law, and that said association so aforesaid formed and organized might see fit to adopt for the regulation of the business of said association, and
52 the conduct of its officers under said articles of association, rules, and regulations by the persons uniting to form such association, and a copy thereof forwarded to the Comptrollers of the Currency, to be filed & preserved in this office.

And the defendant further says that it was in and by said law further provided that the persons so uniting to form such association should,

under their hands, *should* make an organization-certificate, which should specify the name claimed by such association, which said name should be subject to the approval of the Comptroller, and said certificate should also specify the place where its operations of accounts & deposits were to be carried on, designating the State, Territory, or district, and also the particular county, city, town, or village, and also the amount of its capital stock, and the number of shares into which the same has been divided, and the names and place of residence of the stockholders, and the number of shares held by each of them; also a declaration that the said certificate was made to enable such persons to avail themselves of the advantage of the said laws of Congress.

53

And the said defendant further saith that it was in and by said law further provided that there should be no association formed or organized under and by virtue of said law with a capital of less than one hundred thousand ($100,000) dollars. Nor in a city, the population of which exceeds fifty thousand (50,000) persons, with a capital of less than two hundred thousand ($200,000) dollars; provided, however, that banks with a capital of not less than fifty thousand (50,000) dollars might, with the approval of the Secretary of the Treasury, be organized in any place, the population of which should not exceed six thousand (6,000) inhabitants.

And the said defendant further says that heretofore, to wit, at the time and place aforesaid, William M. Rowarth, Charles B. Kountze, Augustus Kountze, &c., did enter into articles of association, and under their hands form an organization and become a body corporate for the purpose of banking at the place aforesaid, to wit, at the city of Central, a place containing less than six thousand inhabitants, and in the county of Gilpin and Territory of Colorado, and under the name and style & description of the Rocky Mountain National Bank of Central, Colorado, with the approval of said Comptrollers, and in said organization-certificate specified the place aforesaid as the place where its operations of discount and deposits were to be carried on, & the amount of its capital stock to be fifty thousand (50,000) dollars, and the number of shares into which the same was to be divided, the names and place of residence of its shareholders, & the number of shares held by each, and also a declaration that the said certificate was made to enable such persons to avail themselves of the advantages of the aforesaid law of Congress, and they did therefore obtain therefor the approval of the Secretary of the Treasury as the said law required, whereby the said Rocky Mountain National Bank of Central City, Colorado, became a body corporate, and has no power, authority, or right to loan and advance to said defendant the said sum of money in said declaration mentioned.

54

55

And this the said defendant is ready to certify; wherefore prays judgment.

H. BUTLER & E. WAKELY,
Def't's Att'ys.

This suit is brought for moneys loaned and advanced by plaintiff to defendant, and for no other cause of action whatever.

And the said defendant, for a further plea in this behalf, by like leave of the court here for this purpose first had and obtained says actio non, because it says & that the said plaintiff is a corporate body organized, existing, and doing business under an act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and

redemption thereof," approved June 3, 1864, and that it had and has a capital stock of fifty thousand dollars and no more; and the said defendant avers that the said plaintiff has no right, power, or authority to loan or advance to said defendant, a greater sum than five thousand dollars, and this it is ready to certify; wherefore it prays judgment, &c.

H. BUTLER & E. WAKELY,
Def't's Att'ys.

56 And the said defendant for a further plea in this behalf, by like leave of the court here for this purpose, first had and obtained, according to the form of the statute in such case made and provided, says actio non, because it says that the said plaintiff was a body corporate at the time it loaned and advanced the said sum of money, in said declaration mentioned to the said defendant, organized, existing, and doing business under and by virtue of an act of the Congress of the United States, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," with a capital of fifty thousand dollars and no more, and that only thirty thousand of said capital stock had been paid in at the time said sums of money were so advanced and loaned to defendant, as in said declaration alleged, and this the said defendant is ready to verify; whereupon it prays judgment, &c.

H. BUTLER & E. WAKELY,
Def't's Att'ys.

57 This suit is brought for money loaned and advanced by plaintiff to defendant, and for no other cause of action.

Filed Nov. 16th, 1869.

H. H. ATKINS, *Clerk.*

And afterwards, to wit, plaintiff, by their attorneys as aforesaid, filed their demurrer 6th day of December, A. D. 1869, together with motion to strike the said second plea of the said defendant from the files of the court; which said demurrer appears from transcript of record certified as aforesaid, and are in words and figures as follows, to wit:

In the district court, 2d judicial district, to the November term, 1869.

TERRITORY OF COLORADO,
County of Gilpin, ss:

THE ROCKY MOUNTAIN NATIONAL BANK of Central City, Colorado,
vs.
THE UNION GOLD-MINING COMPANY OF Colorado.

58 And the said plaintiff, by Johnson & Teller, its attorneys, says that the said pleas thirdly, fourthly, fifthly, sixthly, and seventhly, come in manner & form as pleaded, and the matters therein contained and set forth are not sufficient in law to bar the said plaintiff of its aforesaid action, and that the plaintiff is not bound by law to answer the same, and that the said defendant is ready *ourly;* whereupon the plaintiff prays judgment as aforesaid.

JOHNSON & TELLER,
Attorneys for Plaintiff.

And for cause of special demurrer to the third plea of the defendant, the plaintiff shows to the court the following reasons:

First. Said plea is an attempt on the part of the defendant to plead a forfeiture, when none is given by stipulation.

Second. The plea is to the whole of the declaration & to the whole sum claimed by the plaintiff.

Third. The plea attempts to put in issue the bona fides of the
59 acts of incorporation and is not a plea of *nullie* tenet computation, and no where alledges that the corporation has been dissolved by competent authority; that said plea concludes to the country when it ought to have concluded a verification. Because it does not show how or why said plaintiff was not authorized to make said loan, and because it is not in answer to the declaration.

And as to the 4th plea of the defendants, as special cause of demurrer the plaintiff shows to the court the following reasons, to wit: The plea concludes with the county, when it ought to conclude with a verification; that it is a plea of portion of a plea in all, and is not sufficiently explicit in its allegations.

Because it purports to be a plea to the whole cause of action, and if a plea at all, it is only a plea to a part of the cause of action.

Because it is not in answer to the allegations of the declaration.

Because it does not show that such loan was without authority of law.

60 And for the special cause of demur. to the fifth plea of defendant the plaintiff shows the following causes:

First. Because said plea is defective in not alledging and pointing out how or why the plaintiff has no authority to make said loan.

Because it is not in answer to the whole declaration.

Because it leaves a part of the declaration unanswered.

Because said plea is ambiguous, uncertain, and does not point out a defence or any part of the cause of action original and about in the declaration.

And for special cause of demur. to the 6 & 7 pleas of the defendant the plaintiff shows the following cause of demur.:

Because both the 6 & 7 pleas professes to answer the whole declaration, while in such plea admits that there is a cause of action in favor of plaintiff and against the defendant.

Because the said 6 & 7 plea does not answer the whole declaration.

61 Because it does not appear why the plaintiff had no authority to loan money to the defendant.

JOHNSON & TELLER,
Att'ys for Pl'tff.

Demur. filed Dec'r 6th, 1869.

H. H. ATKINS, *Clerk.*

In the district court, 2d judicial district. November term, 1869.

TERRITORY OF COLORADO,
County of Gilpin, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO.

And now comes the plaintiff, by Johnson & Teller, its attorneys, and moves the court to strike out the record of the plea of the defendant from the files of this court, for the following reasons:

First. Because there is a plea of general issue on file and the plea of nul tiel seal cannot be pleaded with the plea of general issue & other pleas on file.

Because said plea is no authority to put in issue the name of
62 the corporation, and is not sworn to.

Because the said plea is a plea in abatement, and not sworn to.

Because no issue can be formed in the plea as it is.

Because it ought to conclude with a verification.

JOHNSON & TELLER,
Attorneys for Plaintiff.

Motion filed Dec'r 6th, 1869.

H. H. ATKINS, *Clerk.*

And afterwards, to wit, on the 24th day of February, A. D. 1870, a pluries writ of attachment issued out of the office of the clerk of the district court of said county, at Gilpin, in said cause, which said pluries writ of attachment is in word and figures as follows, and upon which said pluries writ of attachment appears the following return:

And also appears præcipe for issuing the above.
And also " subpœna, service, & return.
And also " fee-bill from said county.

63 The people of the Territory of Colorado to the sheriff of Gilpin County, greeting:

Whereas Joseph H. Goodspeed hath complained, on oath, to Horace H. Atkins, clerk of the district court of the second judicial district in and for the county of Gilpin, that the Union Gold Mining Company of Colorado is justly indebted to the Rocky Mountain National Bank of Central City, Colorado, to the amount of twenty-two thousand nine hundred and fourteen dollars and seventy-seven cents; and oath having also been made that the said Union Gold-Mining Company of Colorado is a foreign corporation, and the said Rocky Mountain National Bank of Central City, Colorado, having given bonds and security according to the directions of the act in such cases made and provided:

We, therefore, command you that you attach so much of the estate, real and personal, of the said Union Gold-Mining Company of Colorado, to be found in your county, as shall be of value sufficient to satisfy the said debts and costs, according to the complaint, and such
64 estate so attached in your hands to secure so as to provide that the same may be liable to further proceeding thereupon, according to law, at a court to be holden at the city of Central, for the county of Gilpin, upon the first Tuesday of May next, so as to compel the said Union Gold-Mining Company of Colorado to appear and answer the complaint of the said Rocky Mountain National Bank of Central City, Colorado; and that you also summon, as a garnishee, to be and appear at the said court on the said day of next, then and there to answer what may be objected against.

Where and when you shall make known to said court how you have executed this writ, and have you then and there this writ.

Witness Horace H. Atkins, clerk of our said court, and the seal thereof, this 24th day of February, A. D. 1864.

[SEAL.] HORACE H. ATKINS, *Clerk.*

Pluries writ of attachment. Filed April 8th, 1870.

H. H. ATKINS, *Clerk.*

65 TERRITORY OF COLORADO,
County of Gilpin, ss:

The sheriff will take notice that the previous writs of attachment in this cause were levied on the following described property of said defendant, viz: The certain mill-site & appurtenances, situated in Gregory Gulch, said county, being the same deeded by Lawrence M. Platt & wife to the Union Gold-Mining Company of Colorado, with all the building, machinery, & fixtures therein; also, all the real estate of the Union Gold-Mining Company of Col., in Gilpin County; also, twenty-five cords of first quality of Bates ore, in shaft-house on said lode.

H. H. ATKINS, *Clerk.*

TERRITORY OF COLORADO,
County of Gilpin, ss:

I have duly levied the within writ on the following described property, to wit: Two portable engines, one being inside Union Gold-Mining Company's shaft-house, & the other on outside of said
66 shaft-house, on Bates Lode, Gregory mining district; levied upon as the property of the Union Gold-Mining Company of Colorado, this 8th day of April, 1870.

ALEXANDER K. BROWN,
Sheriff.

Sheriff's fees: Levy, 2.00; c'st of levy, 2.00; mileage, 1.00; return, .75—85.75.

TERRITORY OF COLORADO,
County of Gilpin:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO,
vs.
UNION GOLD-MINING COMPANY.

To the clerk of said court:

You will issue an alias writ of attachment against the estate of the defendant, and make said writ returnable at the next term of this court.

JOHNSON AND TELLER,
Atty's for Plaintiff.

Precipe for alias writ of attachment. Filed Feb. 24, 1870.
H. H. ATKINS, *Clerk.*

67 TERRITORY OF COLORADO,
County of Gilpin, ss:

The people of the Territory of Colorado to the sheriff of Gilpin County, greeting:

We command you to summon Joseph H. Goodspeed, Thomas N. Potter, & G. K. Sabin to appear before the district court of the 2d judicial district within and for the county of Gilpin, at the court-house in the city of Central, in said county, on the 23d day of November, 1870, to testify and the truth to speak in behalf of Rocky Mountain National Bank, in a cause now pending in said court wherein the said Rocky Mountain National Bank is plaintiff, and Union Gold-Mining Company

of Colorado defendant, and this you shall in no wise omit under the penalty of the law, and make due return of this writ. Witness C. G. Hathaway, clerk of our said district court, and the seal thereof, at the city of Central, this 17th day of November, A. D. 1870.

[SEAL.] C. G. HATHAWAY, *Clerk*,
By R. H. SALISBURY, *Deputy*.

68 TERRITORY OF COLORADO,
County of Gilpin, ss:

Nov. 21, A. D. 1870.

I have duly served the within by reading the same to the within-named witnesses as I am therein commanded.

A. K. BROWN, *Sheriff*.

Filed in said court this 21st day of November, 1870.

C. G. HATHAWAY, *Clerk*,
By W. H. SALISBURY, *Deputy*.

Fees: Service, $2.25; mileage, .40; return, .75—$3.40.

In the district court of the 2d judicial district.

TERRITORY OF COLORADO,
Gilpin County, ss:

IN THE MATTER OF THE ROCKY MOUNTAIN National Bank of Central City, Colorado, *vs.* THE UNION GOLD-MINING COMPANY. } Fee-bill.

Plaintiff' costs:

Fil. aff., 35c.; fil. & ate. bond, 1.66; fil'g declaration, .15; att'y's app., .25	2.40
C. & s. d'k'ts, 1.00; go. & filing writ att., 2.15; alias writ, .75	3.90
Ord. to fil. alias writ of att., 2.16; fil. & app. bond, 1.45	3.80
Ord. to plead, 75c.; fil. item. bill, 15c.; fil. dec., .15	1.05
Fil. ser., 15c.; so. & fil. pl. writ, 2.15; en. on ch'y doc't, .75c	3.05
	14.20
69 Sherr. on att. writ	6.75
" " alias " att	8.45
A. K. Brown, sheriff, on att. writ	5.75
Nov. term, 1870. Pl't'f's costs:	
D'k't'g, 1.25; Eve. Dem., .75; dedm. to Bowen, 2.00	4.00
Iss. & fil. su/p., .90; tax. case & bil'	1.90
A. K. Brown, sheriff, on subp'n'	3.40
Defen. costs:	
Att'y's app., .25; office, .35; fil'g pl'as, .15; ent. & fil. bond, .90; ent'g & fil. ans'r, .90; fil. ans., .15	2.75
	$47.15

I, Curtis G. Hathaway, clerk of the district court of the second judicial district in and for Gilpin County, do hereby certify that the fore-

going is a true copy from my fee-book of pl'ff's and def't's costs in the above-entitled suit.

Given under my hand and the seal of said court this 22d day of December, A. D. 1870.

CURTIS G. HATHAWAY, *Clerk.*

70 TERRITORY OF COLORADO,
County of Gilpin:

G. D. 228. Received and filed this 24th day of December, A. D. 1870.
CURTIS G. HATHAWAY, *Clerk,*
By A. J. MACKEY, *Deputy.*

Filed March 4, 1871.

C. G. HATHAWAY, *Clerk,*
By C. C. CARPENTER, *Deputy.*

And afterwards, to wit, on the 7th day of November, A. D. 1870, when a change of venue was had in said cause to Boulder County from said Gilpin County, which said transcript of record of the proceedings had in this case at Central City, Gilpin County, in said 2d judicial district, as appears in the annexed hereto attached, which appears in words and figures as follows, to wit:

Pleas in the district court of the second judicial district of the Territory of Colorado, within and for the county of Gilpin in said Territory, began and held at the court-house in Central City, in the county of
71 Gilpin and Territory of Colorado, on the first Tuesday of May, 1869, before the Hon. William R. Gorsline, associate justice of the supreme court of the Territory of Colorado, and assigned as judge of the second judicial district thereof.

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO,
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Attachment.

Be it remembered that, on the 2nd day of June, 1869, it being one of the regular judicial days of said term of said court, the following proceedings were had in this cause, to wit:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO,
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Attachment.

At this day comes the said plaintiff, by its attorneys, and on motion it is ordered that an alias writ issue in this cause, and that the said stand continued to the next term of this court.

72 And afterwards, to wit, on the 10th day of November, 1869, the same being one of the regular judicial days of the November term of said court, begun and held at the court-house in said city, in said

county and Territory, on the first Tuesday of November, 1869, the following further proceedings were had in this cause, to wit:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO.
} Attachment.

At this day comes said plaintiff, by Johnson & Teller, its attorneys, and the said defendant, by Hugh Butler, esq., its attorney, also comes, and the motion of said defendents to dismiss this cause for want of security for costs being argued by counsel, and the court being fully advised in the matter, is of the opinion that said motion be denied.

And afterwards, to wit, on the 11th day of November, 1869, it being still one of the regular judicial days of said term of said court, the following further proceedings were had in this cause, to wit:

73 ROCKY MOUNTAIN NATIONAL BANK of Central City, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO.
} Attachment.

This day comes the said parties, by their attorneys, and the motion of said defendant to quash the writ in this cause coming on to be heard was argued by counsel, and the court, being fully advised in the matter, is of the opinion that said motion be sustained.

Thereupon, on motion of plaintiff, leave is granted it to amend attachment-bond, and on the same day, to wit, the 11th day of November, 1869, it being one of the regular judicial days of said November term of said court, the following further proceedings were had in this cause, to wit:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO.
} Attachment.

This day come again the said parties, by their attorneys, and on motion of plaintiff it is ordered that defendant plead in this cause
74 by the incoming of court on Tuesday morning next.

And afterwards, to wit, on the 7th day of November, 1870, it being the 6th judicial day of the November term, 1870, of said court, begun and held in the court-house in said city, in said county and Territory, before the Hon. James B. Belford, one of the associate judges of the supreme court of said Territory, and assigned as judge of the 2d judicial district thereof, the following further proceedings were had in this cause, to wit:

THE ROCKY MOUNTAIN NATION. BANK
vs.
UNION GOLD MINING COMPANY.

This day come the parties, by counsel, and the defendant having asked leave to withdraw his second plea as to the non-existence of the corporation heretofore filed therein, which is granted, and said plea withdrawn.

And afterwards, to wit, on the 8th day of November, 1870, it being the 7th judicial day of said term of said court, the following further proceedings were had in this cause, to wit:

75 THE ROCKY MOUNTAIN NATION. BANK
vs.
THE UNION GOLD-MINING COMPANY.

This day come the parties, by their attorneys, and after hearing the arguments of both parties, the court sustains the demurrer of the plaintiffs, heretofore filed in this cause, to which ruling of the court the defendant, by counsel, except.

And afterwards, to wit, on the 23d day of November, 1870, it being the 20th judicial day of said term of said court, the following further proceedings were had in this cause, to wit:

THE ROCKY MOUNTAIN NATIONAL BANK OF Central City
vs.
THE UNION GOLD-MINING COMPANY.

This day come the said parties, by their attorneys, and the said defendants file' herein *his* application for a change of venue in this cause

And afterwards, to wit, on the 26th day of November, 1870, it being the 22d judicial day of said term of said court, the following fur-
76 ther preceedings were had in this cause, to wit:

THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado,
vs.
THE UNION GOLD-MINING COMPANY.

At this day this cause comes on to be heard, on the motion for change of venue, and the court being fully advised in the premises, sustains the said motion.

It is therefore ordered by the court the venue in this cause be changed to Boulder County, and that the defendants pay the costs of said change of venue by the 10th day of December, A. D. 1870.

Copy of petition and affidavit for change of venue.

In the district court, 2d judicial district, of the November term, A. D. 1870.

TERRITORY OF COLORADO,
County of Gilpin, ss:

THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado, pl'ff,
vs.
THE UNION GOLD-MINING COMPANY OF Colorado, def't. } Assumpsit.

77 The Union Gold-Mining Company of Colorado, the defendant in the above-entitled cause, which is a foreign corporation, organized and existing under the laws of the State of New York, by Theo-

dore H. Becker, its president and agent, for this purpose duly authorized, represents to the court that the inhabitants of Gilpin County are prejudiced against the petitioner, the said Union Gold-Mining Company of Colorado, so that fears are by said petitioner, and the officers having control thereof, entertained that it cannot receive a fair and impartial trial in said cause where said cause is now pending, and that said defendant, said petitioners, did not, nor did the president and agent and officers having control thereof, ascertain the existence of such prejudice until Saturday, the 19th of the present month, and that upon Monday, the 21st of the present month, the petitioner caused to be served upon Mess'rs Johnson & Teller, the attorneys of the plaintiff in this cause, a notice that, on the 23d day of the present month, or as soon thereafter as the cause could be heard, it would apply for a change of
78 venue in this cause.

Petition therefore prays for a change of venue in this cause, pursuant to the statutes in such cases made and provided.

UNION GOLD-MINING COMPANY OF COLORADO,
By THEODORE H. BECKER, *President and Agent.*

TERRITORY OF COLORADO,
County of Gilpin, ss:

Theodore H. Becker, being duly sworn, on oath says that he is the president and acting agent of the said Union Gold-Mining Company of Colorado, the defendant in the 'foresaid petition named, and, as such officer, has full power and authority to make the above application for change of venue. He further states, on oath, that the matters and things set forth in the foregoing petition are true, in substance and in fact.

THEODORE H. BECKER.

Subscribed and sworn to before me this 22d day of November, A. D. 1870.

C. G. HATHAWAY, *Clk,*
By W. H. SALISBURY, *Dp'ty.*

79 TERRITORY OF COLORADO,
County of Gilpin, ss:

I, Curtis G. Hathaway, clerk of the district court of the second judicial district of the Territory of Colorado, within and for the county of Gilpin, do hereby certify that the above and foregoing is a true and complete transcript of the record of proceedings had in said court in the above-entitled cause, together with the petition and affidavit for change of venue of said cause, and the papers hereto attached and marked, respectively, A, B, C, D, E, F, G, H, I, J, L, M, N, O, P, are all the papers filed in said court except the petition and affidavit for change of venue.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 22d day of December, 1870.

[DISTRICT COURT SEAL.] CURTIS G. HATHAWAY,
Clerk of District Court.

Filed this 24th day of December, A. D. 1870.

CURTIS G. HATHAWAY, *Clerk,*
By A. J. MACKEY,
Deputy, Boulder Co.

80 And be it remembered also, that afterwards, to wit, on the 5th day of January, A. D. 1871, the following proceedings were had

in the district court, second judicial district, in and for the county of Boulder, which will appear in the annexed transcript of record in said case by stipulation to change of venue to Jefferson County, which said proceedings and stipulation appears in words and figures as follows, to wit:

At a term of the district court of the second judicial district of the Territory of Colorado, within and for the county of Boulder and Territory of Colorado, began and held at the court-house in Boulder, in and for the county of Boulder, Territory of Colorado, on the first Tuesday of January term, A. D. 1871, before the honorable James B. Belford, associate justice of the supreme court of Colorado Territory, and assigned to the second judicial district as the judge thereof, the following, among other proceedings, were had, to wit:

81 ROCKY MOUNTAIN NATIONAL BANK OF Central City
vs.
UNION GOLD-MINING COMPANY OF COLORADO.

Be it remembered that on this 5th day of January, A. D. 1871, the same being one of the regular days of said term of said court, the following proceedings were had in the above-entitled cause, to wit:

ROCKY MOUNTAIN NATIONAL BANK
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Attachment.

And now on this day comes the parties, by their attorneys, and files there a stipulation for change of venue, which is as follows, to wit:

In the district court of Boulder County, January term, A. D. 1871.

TERRITORY OF COLORADO,
County of Boulder, ss:

It is hereby stipulated that the venue in the above-entitled cause shall be changed from the county of Boulder to the district court
82 of Jefferson for trial; and that no objection shall be taken by either party to the form or manner of the certificate of the clerk of the district court of Boulder County in certifying to the records or transcript to the district of Jefferson County; and it is further stipulated that said cause shall be tried in the district court of Jefferson County the same as if the venue had been changed originally from the district court of Gilpin County to the district court of Jefferson County instead of the district court of Boulder County.

Dated December 30th, A. D. 1870.

JOHNSON & TELLER,
Att'ys for Plaintiffs.
E. T. WELLS,
Defendant's Att'y.

It is thereupon ordered by the court that the venue in this cause be changed to the county of Jefferson, and that this cause, together with all the papers herein, be transmitted to Jefferson County for further proceedings according to law.

83 TERRITORY OF COLORADO,
County of Boulder, ss:

I, Curtis G. Hathaway, clerk of the district court of the second judicial district of the Territory of Colorado, do hereby certify that the above is a true and correct transcript of all the proceedings had in said

court in the above-entitled cause as the same appears of record; and that the papers hereto attached and marked "A," and one package of depositions taken by Charles Nettleton, commissioner, the same being attached to the paper of the entitled cause, are all the papers filed in said cause, except the stipulation for change of venue, of which a copy is hereunto attached.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 28th day of January, A. D. 1871.

[DISTRICT COURT SEAL.] CURTIS G. HATHAWAY, *Clerk*,
By A. J. MACKY, *Deputy*.

Fee-bill in the following cause.

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL City
vs.
UNION GOLD-MINING COMPANY.

84	Docketing case, 1.25; filing papers and stipulation, 45...	1.75	
	Court venues, 75; mak'g record, 1.00	1.75	
			83.45
	Issuing supp. to Gilpin Co	75	
			4.20
	Taxing costs, 1.00; attorney appear'g, 25	1.25	
			85.45

I, Curtis G. Hathaway, clerk of the district court in and for the county of Boulder, do hereby certify that the foregoing is a true copy from my fee-book of costs in the above entitled suit.

Given under my hand and seal of the said court this 28th day of January, 1871.

[SEAL.] CURTIS G. HATHAWAY, *Clerk*,
By A. J. MACKEY, *Deputy*.

Filed March 4th, 1871.

C. G. HATHAWAY, *Clerk*.
By C. C. CARPENTER, *Deputy*.

And be it also further remembered that afterwards, to wit, on the 26th day of November, A. D. 1873, present, honorable Moses Hallett, chief-justice of the Territory of Colorado, judge presiding; John
85 R. Cleveland, clerk, by Henry Bell, deputy, for said county of Jefferson; and William L. Smith, sheriff of said county of Jefferson, it being one of the judicial days of the regular term of said court, of the November term, A. D. 1873—

IN THE MATTER OF ROCKY MOUNTAIN National Bank of Central City, Colorado,
vs.
THE UNION GOLD-MINING COMPANY OF Colorado.
} Attachment. Venue from Gilpin County.

Be it remembered, that heretofore, to wit, on the 23d day of October, A. D. 1873, it being in vacation preceding the said November term of

said court, came said plaintiff', by their attorneys Teller, Gorsline & Charles, esq's, and filed in the office of said clerk notice to said defendants to take the deposition of George K. Sabin, which hereto annexed and is in words and figures as follows, to wit:

In district court, 2d judicial district.

TERRITORY OF COLORADO,
Jefferson County, ss:

THE ROCKY MOUNTAIN NATIONAL BANK OF Colorado, (Central City,)
vs.
THE UNION GOLD-MINING COMPANY OF COLorado.

86 The above-named defendant is hereby notified that on the 31st day of October, A. D. 1873, between the hours of 9 o'clock a. m., and 4 o'clock p. m., of said day, at the office of John R. Cleaveland, in Central City, Gilpin County, Colorado Territory, we shall proceed to take the deposition of George K. Sabin, a resident of Gilpin County, Colorado Territory, before John R. Cleaveland, esq., clerk of the district court of the second judicial of Colorado, or some other officer authorized by law to take depositions in such cases, to be had in evidence on the trial of the above-entitled cause on the part and in behalf of said plaintiff, at which time and place you can appear and cross-examine said witness, if you choose and see fit to do so.

Central City, Oct. 20, 1873.

H. M. TELLER &
A. R. GORSLINE,
Attorneys for Plaintiff.

Received copy of within notice this 20th day of October, A. D. 1873.
HUGH BUTLER,
Def't's Att'y.

Filed Oct. 23, 1873.

J. R. CLEAVELAND, *Clk.*

87 Filed Nov. 26, 1873.

J. R. CLEAVELAND, *Clk,*
By HEN'Y BELL, *Dep'y.*

And afterwards, to wit, on the 31st day of October, A. D. 1873, the said plaintiff by their attorneys filed in the office of said clerk a certain stipulation, which said stipulation is hereto annexed and appears in words and figures as follows, to wit:

In district court f'r November term, 1873.

TERRITORY OF COLORADO,
County of Jefferson, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City, Colorado,
vs.
THE UNION GOLD-MINING COMPANY, OF COLorado.

It is hereby stipulated that no objection shall be taken to the form of the questions asked the witness Sabin in taking his deposition, and with

to be such objection to the question and answer as he may see fit, except as before stated to the form of the question.

HUGH BUTLER,
G. B. RAND,
Att'y for Def'ts.
H. M. TELLER,
J. Q. CHARLES,
88 W. R. GORSLINE,
Attorneys for Pl'ff.

Filed Oct. 31st, 1873.

J. R. CLEAVELAND, *Clerk*,
By HENRY BELL, *Deputy.*

And afterwards, to wit, on the said 26th day of November, A. D. 1873, it being one of the judicial days of the regular term of said court, begun and holden on the 18th day of November, A. D. 1873, and officers the same as on the day of the 26th November, A. D. 1873, the following proceedings were had and entered of record in said court, in said cause, to wit:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO, *vs.* THE UNION GOLD-MINING COMPANY, OF COLORADO. } Attachment. Venue from Gilpin County.

And now comes the plaintiff, by attorneys, H. M. Tellar, J. Q. Charles, & W. R. Gorsline, esq'r's, and come said defendant, by attorneys, G. B. Reed, Hugh Butler, & E. Wakely, esq'r's.

And this case coming on for trial, comes E. S. Book, Richard
89 H. Harris, W. C. Hendricks, Peter Deiht, H. W. Gayton, Stephen L. Higley, Wm. Strong, Elmes Smith, H. Crippin, Frank A. Hartzell, Alexander Rooney, & H. H. Stebbins, who were sworn to answer such questions as would be put to them by the court and counsel touching their competency to serve as jurors in this case.

TERRITORY OF COLORADO,
County of Jefferson, ss:

At said term of said court begun and holden as aforesaid, present as aforesaid, on this 28th day of November, A. D. 1873, met pursuant to adjournment, the following proceedings were had:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO, *vs.* THE UNION GOLD-MINING COMPANY, OF COLORADO. } Attachment. Venue from Gilpin County.

And now comes this day said plaintiff by attorneys aforesaid, & comes the said defendant by attorneys aforesaid, and the jurors heretofore called in this cause also come, save and except one Elmus Smith,
90 who, upon inquiry made, is found to be ill and unable to attend, and the said Elmus Smith is by the court excused from sitting as a juror in this cause.

Then came E. S. Book, Richard H. Harris, W. C. Hendricks, Peter Deihl, W. W. Gayton, W'm Strong, H. Crippin, Alexander Rooney, Spencer Fooshee, W. Perrin, George W. Haniman, and H. T. Benson, good and lawful men of said Jefferson County, who, being duly selected,

empanneled, tried, and sworn to well and truly try the issues joined in this cause, and a true verdict render according to the evidence, and after hearing evidence of witnesses until the hour of adjournment, when the further trial of this cause was adjourned until the court shall convene again.

TERRITORY OF COLORADO,
County of Jefferson, ss:

At said term of said court begun and holden as aforesaid, present as aforesaid, on this 29th day of November, A. D. 1873, met pursuant to adjournment, the following proceedings were had:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO, *vs.* THE UNION GOLD-MINING COMPANY, OF COLORADO. } Attachment. Venue from Gilpin County.

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And now comes the said plaintiff, by attorneys aforesaid, and comes the said defendants, by attorneys aforesaid, and also come all of said jurors who have been selected & sworn to try said issues joined in this cause, and a true verdict render according to the evidence, and after hearing the evidence of witnesses until the hour of adjournment, when the further trial of this cause was adjourned until the court shall convene again.

TERRITORY OF COLORADO,
County of Jefferson, ss:

At said term of said court begun and holden as aforesaid, present as aforesaid, on this first day of December, A. D. 1873, met pursuant to adjournment, the following proceedings were had:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO, *vs.* UNION GOLD-MINING COMPANY, OF COLORADO. } Attachment. Venue from Gilpin County.

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And now comes this day the said plaintiff, by attorneys aforesaid, and comes the said defendant by attorneys aforesaid, and also comes all of said jurors who have been selected & sworn to try said issues joined in this cause, and a true verdict render according to the evidence, and after hearing evidence of witnesses until the hour of adjournment, when the further trial of this cause was adjourned until the court shall convene again.

TERRITORY OF COLORADO,
County of Jefferson, ss:

At said term of said court begun and holden as aforesaid, present as aforesaid, on this 2nd day of December, A. D. 1873, met pursuant to adjournment.

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO, *vs.* UNION GOLD-MINING COMPANY, OF COLORADO. } Attachment. Venue from Gilpin County.

And now comes on this day the said plaintiff by said attorneys, and comes said defendant by said attorneys as aforesaid, and also comes said jurors as aforesaid, who are duly selected, empannelled,

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tried, and sworn to well and truly try the issues joined in said cause, and a true verdict render according to the evidence, and after hearing all the evidence of the witnesses in this cause, the court adjourned to meet to-morrow morning, Dec. 3d, 1873, at 9 o'clock a. m.

TERRITORY OF COLORADO,
County of Jefferson, ss:

At said term of said court, begun and holden as aforesaid, present as aforesaid, met pursuant to adjournment on this 3d day of December, A. D. 1837.

ROCKY MAUNTAIN NATIONAL BANK OF CENTRAL CITY, of Colorado,
vs.
THE UNION GOLD-MINING COMPANY, OF COLORADO.
} Attachment. Venue from Gilpin County.

And now comes on this day the said plaintiff by said attorneys, and comes said defendant by said attorneys, and also comes said jurors, good and lawful men of said Jefferson County, who were duly
94 selected, empannelled, tried and sworn to well and truly try the issues joined in said cause, and a true verdict render according to the evidence, and the arguments of counsel in said case being now submitted to the jurors, the said jurors are charged by the court and taken in charge by a sworn bailiff.

Afterwards, and on same day, the jurors aforesaid return into court, and upon their oaths do say that they find the issues joined in this cause for the said plaintiff, and that they assess the said plaintiff damages at thirty thousand three hundred and fifty-eight dollars and thirty-two cents, ($30,358.32.)

And thereupon the said defendant, by Hugh Butler, esq., its counsel, demand that the jurors aforesaid be polled, and the jurors aforesaid being severally called, answers, each for himself, that the verdict aforesaid was and is his verdict; and thereupon the said jurors are by the court discharged from further attendance in this cause, and the said defendant gave notice of a motion for a new trial in this cause.

95 TERRITORY OF COLORADO,
County of Jefferson, ss:

At said term of said court, begun and holden as aforesaid, the court convened at 9 o'clock Dec. 4, 1873, on said day, pursuant to adjournment; there were officers present the same as on yesterday. The following proceedings were had and done and entered of record:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, Colorado,
vs.
THE UNION GOLD-MINING COMPANY, OF COLORADO.
} Attachment. Venue from Gilpin County.

Now, again, comes said plaintiff by said attorney, also said defendant by said attorney also comes, and the motion of the said defendant to set aside the verdict of the jury rendered in this cause, and to grant a new trial herein, came on to be heard, and it is submitted to the court

without argument, and after consideration thereof it is ordered by the court that the said motion be denied.

And thereupon said plaintiff moved the court for judgment
96 upon the verdict of the jury herein. And it is considered by the court that the said plaintiff do have and recover of and from the said defendant the said sum of thirty thousand three hundred and fifty-eight dollars and thirty-two cents ($30,358.32,) for its damages so as aforesaid by the jury aforesaid assessed and awarded to said plaintiff, and also its costs and charges by it about its suit in this behalf expended, to be taxed by the clerk of this court, and that it have execution therefor.

And thereupon the said defendant prayed an appeal from the judgment aforesaid to the supreme court of said Territory. And the said appeal is by the court allowed, upon the condition that the said defendant give bond to the said plaintiff in the sum of thirty-five thousand dollars, with the security to be approved by the clerk of this court, and conditioned according to law, such bond to be given, approved, and filed in this cause by or before the 20th day of January next.

97 And upon motion of the said defendant, day is given it to file its bill of exceptions herein until the 20th day of January next, and such bill of exceptions may be filed in this cause by or before the day last named with the same effect as if filed in term time.

And it is further ordered that either party to this cause be at liberty to withdraw from the files of this court letters and papers by them respectively given in evidence upon the trial of this cause, upon leaving with the clerk certified copies of such letters and papers.

Be it remembered also, that on the same day defendants filed a motion for a new trial with said clerk of said court, which said motion appears below in words and figures as follows, to wit:

In district court of Jefferson County aforesaid. November Term, 1873.

TERRITORY OF COLORADO,
County of Jefferson, ss:

ROCKY MOUNTAIN NAT'L BANK OF CENTRAL CITY
vs.
UNION GOLD-MINING COMPANY, OF COLORADO.

98 And now comes the said defendant, by its attorneys, and moves the court to set aside the verdict of the jury herein and to grant a new trial of this cause, for the following reasons, to wit:

First. Because the court erred in admitting irrelevant, immaterial, & improper testimony offered by the plaintiff and against the objection of defendant.

Second. Because the court erred in excluding relevant, material, and proper testimony offered by defendant.

Third. Because the court erred in giving erroneous instructions to the jury offered and requested by plaintiff.

Fourth. Because the court erred in refusing to give to the jury proper and correct instructions asked by defendant.

Fifth. Because the court erred in giving improper and erroneous instructions to the jury on its own motion.

Sixth. Because the verdict of the jury is contrary to the law of the case.

Seventh. Because the verdict of the jury is contrary to the evidence.

Eighth. Because the court erred in overruling defendant chal-
99 lenge to the juror Perrin and in allowing him to be empannelled as a juror to try the cause.

Ninth. Because the damage' assessed by the jury are excessive.

Tenth. Because the proceedings are otherwise informal, uncertain, erroneous, and insufficient.

HUGH BUTLER,
G. B. REED,
Defendant's Attorneys.

Filed December 4th, 1873.

JOHN R. CLEAVELAND,
Clerk,
By HENRY BELL, *Deputy Clerk.*

And afterwards, to wit, on the 19th day of January, A. D. 1874, the defendant filed with the clerk of this court an appeal-bond, which appeal-bond was approved by said clerk at same date, and appears below in words and figures as follows:

Know all men by these presents that we, The Union Gold-Mining Company, of Colorado, (a corporation organized and existing
100 under the laws of the State of New York,) as principal, and Theodore H. Becker, of the county of Gilpin, Robert B. Bradford, of Jefferson County, Orpheus I. Barnes, of Clear Creek County, and John Hughes, of Denver City, Arapahoe County, Territory of Colorado, as sureties, are held and firmly bound unto the Rocky Mountain National Bank of Central City, Colorado, in the penal sum of thirty-five thousand dollars, ($35,000,) lawful money of the United States, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Witness our hands and seals this nineteenth day of January, A. D. 1874, (19th January, A. D. 1874.)

The conditions of this obligation is such that, whereas The Rocky Mountain National Bank of Central City, Colorado, did, at the November term, A. D. 1873, of the district court of the second judicial district in and for the county of Jefferson, in the Territory of Colorado,
101 recover a judgment against the above bounden Union Gold-Mining Company, of Colorado, for the sum of thirty thousand three hundred and fifty-eight dollars and thirty-two cents ($30,358$^{32}_{100}$) besides costs of said suit, from which said judgment of the said district court of Jefferson County, the said Union Gold-Mining Company, of Colorado, has prayed for and obtained an appeal to the supreme court of said Territory:

Now, therefor', if the said Union Gold-Mining Company, of Colorado, shall duly prosecute its said appeal with effect, and moreover, pay the amount of the judgment, costs, interest, and damage rendered and to be rendered against it in case the said judgment shall be affirmed in said supreme court, then this obligation to be void, otherwise to remain in full force and effect.

{ UNION GOLD-MINING COMPANY, COLORADO. }

UNION GOLD-MINING COMPANY OF COLORADO,
By THEODORE H. BECKER, [SEAL.]
Its President. [SEAL.]

Witness to signature of Theodore H. Becker, Pres't of Union Gold Mining Company.

F. A. POTTS,
Treasurer & Sec. of Union Gold-Mining Company of Colorado.

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UNION GOLD-MINING COMPANY, COLORADO.	THEODORE H. BECKER.	SEAL.
	ROBERT B. BRADFORD.	SEAL.
	O. J. BARNES.	SEAL.
	JOHN HUGHES.	SEAL.

Approved and filed January 19th, 1874.

JOHN R. CLEAVELAND, *Clerk*,
By HENRY BELL, *Deputy Clerk*.

And afterwards, to wit, the defendant, by said attorneys, filed with the clerk of the said court two (2) stipulations, which said stipulations are in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Jefferson, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO,
vs.
UNION GOLD-MINING COMPANY OF COLORADO.

It is hereby agreed by its attorneys of and in the case that, if they can agree upon the bill of exceptions, the same may be filed
103 with the clerk and signed by Judge Hallett at any time before the record is sent into the supreme court, and if they cannot agree by the 20th, that the defendant may have five days more in which to file the bill of exceptions, & were it signed by the judge, and that it shall then be filed as if the 20th.

H. M. TELLER,
G. R. GORSLINE,
Attorneys for Plaintiff.

Filed January 24th, 1874.

J. R. CLEAVELAND, *Clerk*,
By HENRY BELL, *Deputy*.

In district court, 2d judicial district, in & for said county.

TERRITORY OF COLORADO,
County of Jefferson, ss:

THE ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY
vs.
UNION GOLD-MINING COMPANY OF COLORADO.

It is hereby stipulated and agreed by the parties in the above-mentioned cause that the bill of exceptions therein may be filed on
104 or before January 25th, 1874, and filed of the date of the 20th January, 1874.

January 20th, 1874.

H. M. TELLAR,
W. R. GORSTINE,
Attorneys for Plaintiff.

Filed January 24th, 1874.

J. R. CLEAVELAND, *Clerk*,
By HENRY BELL, *Deputy*.

And on the same day defendant, by said attorneys, filed in the office of the said clerk their bill of exceptions, which said bill of exceptions appears as follows, in words and figures, to wit:

In district court, second judicial district, in and for Jefferson County. November term, 1873.

TERRITORY OF COLORADO,
County of Jefferson, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, Colorado, plaintiff,
vs.
THE UNION GOLD-MINING COMPANY OF COLORADO, defendant.
} Assumpsit.

105 Be it remembered, that on the 8th day of November, 1870, it being one of the judicial days of the November term, A. D. 1870, of the district court of said second judicial district, in and for the county of Gilpin, this cause came on to be heard on the demurrer of said plaintiff to the 2d, 3d, 4th, 5th, & 6th pleas of said defendant, and said demurrer was sustained by the court, to which ruling of the court the defendant, by its attorney, then & there excepted.

And afterwards, to wit, on the 26th day of November, A. D. 1873, it being one of the judicial days of the November term, A. D. 1873, of the district court of the said district, in and for the county of Jefferson, this cause came on for trial.

Before the jury were empan*n*elled in said cause the defendant moved the court to suppress certain parts of the deposition of George K. Sabin, taken to be used in the trial of this cause.

The first objection was to the 17th direct interrogatory, because
106 it is irrelevant and immaterial, it assumes something not proved, it has not been proved that any one succeeded. The objection was overruled by the court, & the defendant then and there excepted to the ruling.

The defendant objected to the answer to the 25th direct interrogatory, because it is not responsive to the interrogatory. Objection overruled by the court, and the defendant then and there excepted to the ruling of the court.

The defendant objected to the 26th direct interrogatory, because it is substantially the same question as asked before, and the witness has answered the question as asked in his own way. Because it is irrelevant and improper, and because what is a superintendent is a question of fact; and because it is the duty of the witness to state what position was occupied and not what witness called that position. The objections were overruled by the court, and the defendant then and there
107 excepted to the ruling of the court.

The defendant objected to the 27th direct interrogatory for the same reasons as last above, and, further, because it assumes that witness was employed in some particular capacity. The objection was overruled by the court, and the defendant then and there excepted.

The defendant objected to the 33d direct interrogatory, because it is immaterial and irrelevent; and the defendant also objected to the answer to said 33d interrogatory, because it is not responsive, and is improper, from the fact that it had not been shown by any proof that the

defendant had rented an engine of the witness. The court overruled the objection to the interrogatory and to the answer, and the defendant then and there excepted to each of said rulings.

The defendant objected to the answer of the 50th direct interrogatory, because it is stated on information.

The defendant objected to the 51st direct interrogatory and to the answer thereto, because they inquire into witness' source of infor-
108 mation.

The defendants objected to the 63d direct interrogatory, because the testimony sought to be elicited was not the best evidence of the fact to be proved.

The defendants objected to the 67th direct interrogatory, because it is immaterial, irrelevant, and was part of the res gesta. The court overruled the objection, and the defendant excepted to the ruling of the court.

The defendant objected to each of the 68th, 69th, 70th, 71st, & 72d direct interrogatories for the same reasons as just above stated, and the court overruled said several objections, and the defendant then and there excepted to each and every of said ruling'.

The defendant objected to the 73d, 76th, 77th, & 78th direct interrogatories, because they are & each of them is immaterial, irrelevant, and not the best evidence; but the court overruled the several objec-
109 tions, and the defendant then and there excepted to each and every of said rulings.

The defendant objected to the 83d direct interrogatory as follows:

1st. It is irrelevant and immaterial.

2d. It is not part of the res gesta.

3d. There has been no foundation laid for that kind of testimony. There is no foundation laid for testimony showing that, if witness was agent, his principal ever knew of those contracts, or assumed their debts, or paid any of them.

Fourth. That it was not the same kind of dealings as are charged to have taken place between plaintiffs & defendants by the agent.

5th. There has been no foundation laid showing that the plaintiff ever knew any such business had been done in the name of the defendant at the time the account was opened; but the court overruled said objections, and the defendant then and there excepted to the ruling of the court.

The defendant objected to each of the 85th & 86th direct interrogatories for the same reasons as given last above; but the court overruled the several objections to each of said interrogatories, and
110 the defendant then and there excepted to the ruling of the court.

The defendant objected to the 90th direct interrogatory, because it assumes that it was the indebtedness of the defendant without showing the facts in regard to its being contracted. Whether it was the debt of the defendant or not is, part of it, a question of law and part of it a question of fact.

The defendant objected to the 91st direct interrogatory and to the answer thereto, because the answer states that debt was created by overdraft, & drawing checks in the name of the defendant; 2d, that there is no power shown, no appointment of Sabin as agent, nor power to draw checks or drafts, nor power to do any business in the name of defendant, and no authority in the plaintiff from the defendant to pay checks shown. The objections were overruled by the court, and the defendant then and there excepted to the ruling of the court.

The defendant objected to the 92d direct interrogatory and to the

answer thereto, because it is not in proof that Sabin was ever au-
111 thorized to carry on any business for the defendant, either milling or mining; but the court overruled the objection, and the defendant then and there excepted to the ruling of the court.

The defendant objected to each of the 93d, 94th, & 95th direct interrogatories, because the evidence sought to be elicited is not the best evidence; 2d, because they assume the debt to be the debt of the defendant. The court overruled the several objections, and the defendant then and there excepted to the ruling of the court upon each of said interrogatories.

The defendant objected to the 97th and 98th direct interrogatories, & each of them, because it is partly a question of law and partly a question of fact, and instead of eliciting the facts from the witness, they seek to elicit his opinion. The court overruled the objections and each of them, and the defendant then and there excepted to the ruling of the court upon each of said interrogatories.

112 The defendant objected to the 99th direct interrogatory, because it is not the best evidence. The objections was overruled by the court, and the defendants then and there excepted to the ruling of the court.

The defendant objected to the 100th direct interrogatory, because improper.

The defendant objected to the 101st direct interrogatory, because it is not the best evidence; 2d, because it assumes that it was a debt of defendant to plaintiff. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Defendant objected to 102d direct interrogatory—1st, it is immaterial and irrelevant; 2d, it is not proper testimony to show an authority. The court overruled the objections, and the defendant then and there excepted.

The defendant objected to the 103d direct interrogatory, because it is irrelevant and immaterial whether he had or not; 2d, it asks for
113 a communication from Becker as an individual, & not in his official capacity; but the court overruled the objection, and the defendant then and there excepted.

The defendant objected to the 104th direct interrogatory, because it is immaterial, but the court overruled the objection, and the defendant then and there excepted.

The defendant objected to the 106th direct interrogatory, because it assumes that the checks drawn by Sabin were the checks of the defendant, and there has been no authority shown from the defendant to Sabin to draw checks, but the court overruled the objection, and the defendants then and there excepted to the ruling of the court.

The defendant objected to the 107th direct interrogatory, because it is no part of the res gesta; 2d, it is immaterial; if there had been any number of receipts taken without the knowledge of the defendant it would be no evidence against the defendant; but the court over-
114 ruled the objection, & the defendants then and there excepted to the ruling of the court.

Defendant objected to 108th direct interrogatory, because there is no reason shown why they should introduce a copy.

The defendants objected to the 110th direct interrogatory, because it is not the best evidence; it is not proper to prove the contents of a written paper by parol.

Defendant objected to the 111th, 112th, 115th, 116th, & 117th direct interrogatories, because each of them are immaterial and they assume

that defendant was then in business employing men, which has not been proven; but the court overruled the objections to the several interrogatories, and the defendant then and there excepted to each of the several rulings.

The defendant objected to the 118th, 119th, 120th, 121*th*, 122*th*, & 123d direct interrogatories & to each of them, because immaterial. The court overruled the several objections, and the defendant then and there excepted to each and the several rulings of the court.

115 Defendant objected to the 125th direct interrogatory, because not the best evidence; the court overruled the objections, and the defendant then and there excepted to the rulings of the court.

Defendant objected to 127th & 128th direct interrogatories, because immaterial; 2d, it is in regard to matters that occurred in relation to the alleged debt, after the contracting of the debt; and the court overruled the objection, and the defendant then and there excepted to the ruling of the court.

Defendant objected to 129th direct interrogatory; 1st, because immaterial; 2d, it having been shown that the president was present at the time the witness acted without special powers to do the business inquired about; but the court overruled the objection, and defendant then and there excepted to the ruling.

Defendant objected to the 130th, 131st & 132d direct interrogatories, because immaterial; but the court overruled the objection, and

116 the defendant then and there excepted to the ruling.

The defendant objected to the 133d direct interrogatory for the same reason as last above, and to the answer, because it states a supposition instead of a fact.

Defendant objected to 134th direct interrogatory, because it is not the best evidence.

Defendant objected to 140th direct interrogatory in regard to letters, because there are no envelopes, nothing to show to whom they were directed, no evidence that they ever were directed or sent to anybody or received by anybody; but the court overruled the objections, and the defendant then and there excepted.

Defendant objected to the 144th direct interrogatory for the following reasons:

1st. To the letter marked "A," because it is not part of the res gesta.

2d. It is written *in* a subject entirely foreign to the one in controversy, and not on that relates to any transaction between plaintiff and defendant.

117 3d. It is not a full letter, and has no signature, and is only part of a letter.

4th. Because it was written prior to any dealings by the witness with the plaintiff in the name of defendant.

Objections to the letter marked "B":

1st. It is not a full letter, only a part of a letter, has no signature, is no part of the res gesta, and does not relate to the matter in controversy.

Objections to letter marked "C" same as the objections to letter marked "A," except it is signed.

Objections to letter marked "F." That is no part of the res gesta; does not relate to any dealings with plaintiff. It was written on a subject entirely foreign to the matter in controversy. It was written before there were any dealings between the witness in the name of defendant and plaintiff.

Objections to the letter marked "G," the same as to letter marked "F."

Objections to the letter marked "H." It is only a fragment of a letter, has no signature, is no part of the res gesta, and does not relate
118 to the matter in controversy as to any dealings with plaintiff.

Objections to the letter marked "J:"

It was written nearly a year before there was any dealing between the plaintiff and witness in the name of defendant, is no part of the res gesta, is on private matters; and to all of *then* letters, except that one marked "C," that they are not official but private letters; to all of them, that they were not written to the plaintiff. It is not shown that plaintiff knew of their existence until long after his transactions with the witness Sabin; but all and each of said objections were overruled by the court, and the defendant then and there excepted to the ruling of the court.

Defendant objects to direct interrogatory 145th, because the envelopes mentioned were not shown to ever have contained any letters. The ruling was not read to jury.

Defendant objected to direct interrogatory 150th. First, there is no evidence that they ever contained any letters. 2nd, no evidence
119 to show in what year or years they were adduced or received. 3d, no evidence that plaintiff knew of their existence until after his transactions with Sabin were closed. 4th, no evidence that they were not adduced and received while Sabin was the superintend*a*nt of defendant, prior to April, 1866. 5th, they are not competent evidence for any purpose whatever.

Defendant objected to the 151st direct interrogatory, because it assumes that defendant was mining and had *in* foreman, and there is no evidence of either fact; also, because it is immaterial; but the court overruled said objections, and the defendant then and there excepted to the ruling.

Defendant objected to the 152d direct interrogatory because it is immaterial; 2d, it is not the best evidence; and also objects to part of the answer to 152d direct interrogatory because there was no authority shown to sign any paper in the name of the defendant, or to the plaintiff from the defendant, to take checks drawn in its name from the witness Sabin. The court overruled the said objection, and the defendant then and there excepted.

120 Defendant objected to the 153d direct interrogatory because it assumes that defendant was carrying on business, which is a conclusion both of fact and law, and to which the witness could not testify, but only state the facts. The court overruled the objections, and the defendant then and there excepted.

Defendant objected to the 154th direct interrogatory because there is no authority shown for Sabin to sign checks in name of defendants; 2d, no authority shown from defendant to plaintiff to pay checks so drawn by Sabin. The court overruled the objections, and the defendant then and there excepted to the rulings

Defendant objected to the 156th direct interrogatory because immaterial. The court overruled the objection, and the defendant then and there excepted.

Defendant objected to 158th direct interrogatory for the same reasons as assigned in objection to 154th interrogatory. The court overruled the objection, and defendant excepted.

121 Defendant objected to 160th direct interrogatory because immaterial. Court overruled the objection, and defendant then and there excepted.

Defendant objected to 161st direct interrogatory because it seeks to get conclusions of law from witness instead of fact. 2d. Whether the defendant was indebted to plaintiff is a question of law under the circumstances asked of witness. The court overruled the objections, and defendant then and there excepted.

Defendant objected to the 162d direct interrogatory for same reasons as assigned in objection to 154th direct interrogatory. The court overruled the objections, and defendant then and there excepted.

Defendant objected to the 2nd redirect interrogatory for same reason as last above, and further, because it is not the best evidence. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Defendant objected to the 4th redirect interrogatory because immaterial and not proper redirect examination; is not in regard to any-
122 thing drawn out by defendant on cross-examination. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Defendant objected to part of the answer to the 7th redirect interrogatory, because not responsive to the question, and also that it is not proper on redirect examination; the defendant had not on cross-examination asked the witness in regard to anything about what he had sworn to before; but the court overruled the objections, and the defendant then and there excepted to the ruling of the court.

Defendant objected to 8th redirect interrogatory for same reasons as last above assigned, and the court overruled the objections, and the defendant then and there excepted to the ruling of the court.

Defendant objected to 10th redirect interrogatory because not proper redirect examination. It asks the witness how he understood a matter instead of in regard to the fact of the transaction; it calls for the
123 opinion of the witness; and objects to the answer to said 10th redirect interrogatory because witness answers what his impression was. 2d. Because not responsive to the interrogatory. The court overruled the objections, each and all, and defendant then and there excepted to the ruling.

Defendant objected to 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, & 25th redirect interrogatories, & each of them, because immaterial and not proper redirect examination. The court overruled the objections to each of said several interrogatories, and the defendant then and there excepted to each of said rulings.

Defendant objected to 29th redirect interrogatory, because, 1st, it is immaterial; 2nd, not proper re-examination; 3d, it was examined of by the plaintiff on direct examination and not drawn out on cross-examination; 4th, not the best evidence.

The defendant objected to the answer to 30th redirect interrogatory, because not responsive.

124 Defendant objected 31st redirect interrogatory, because it calls for an impression instead of a fact; and also objects to the answer, because, instead of a fact, it is merely what the witness thought. The court overruled the objections, and the defendant then and there excepted to the ruling.

Defendant objected to 32d redirect interrogatory, because it is in regard to matters not drawn out on cross-examination, it is plaintiff cross-examining its own witness. The court overruled the objections, and defendant then and there excepted.

Defendant objected to 34th redirect interrogatory, because it is not proper redirect examination; also, the same objections as assigned to

32nd redirect interrogatory. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

The plaintiff objected to 12th X int., because it calls for a paper
125 which never was in possession of plaintiff and of which plaintiff never had any knowledge. It is not the paper that he says was delivered to defendant, but a copy; says he has an original paper, refuses to deliver the original, & is asked to append a copy. The court sustained the objection, and defendant then and there excepted to the ruling of the court.

The plaintiff objected to the 12½ cross-int. because immaterial; if defendant produces any paper it must be the original, or they must show its loss, and the witness says he has the original. The court sustained the objection, and defendant then and there excepted.

The plaintiff objected to X int. No. 12¾, because not competent evidence; even if the original was competent, there has been no foundation laid for the introduction of a copy. The court sustained the objections, and defendant then and there excepted.

The plaintiff to the X int's 94th to 105th, inclusive, because
126 not proper X examination. The court sustained the objections, and the defendant then and there excepted.

The plaintiff objected to each of the 126th, 127th, & 131st X int's, because immaterial and irrelevant and not proper X examination. The court sustained the objections, and the defendant then and there excepted to the ruling of the court.

The court here stated that all the objections to the deposition of Sabin which has been sustained were noted on the margin of the deposition, and should so appear in the record.

The defendant here excepted to the ruling of the court at striking out any part of the cross-examination and in overruling further exceptions on the part of the defendant.

The defendant also especially excepted to the ruling of the court in sustaining plaintiff' objections to 104th and 105th cross-interrogatories.

127 And afterwards, and on the same day, the parties proceeded to empannel a jury to try said cause, and that, needing others, one Henry Nutt was sworn to answer truly all questions put to him touching his competency to sit as a juror on the trial of said cause, and was examined by M'r Teller on part of plaintiff, and made answers as follows, to wit:

Question. M'r Nutt, what do you say about it?

Answer. I have heard the case talked of frequently. I don't know as I have formed an opinion.

Question. Was you present at the trial?

Answer. No, sir; I was not.

Question. Was you present at either of the trials?

Answer. No, sir; not that I am aware of.

Question. You don't know anything about the facts in the case?

Answer. No.

Question. From what you have heard, have you formed an opinion?

Answer. I don't know as I have.

Question. Can't you say whether you really have an opinion?

Answer. I can't say I have; don't know that I heard the facts.

128 Question. If what you have heard?

Answer. I would have an opinion.

Question. If that was true?

Answer. Yes, sir.

Question. You learned these facts from parties who professed to know?

Answer. I heard it talked outside around town; not present in the room when the case was tried.

Question. From what you have understood, you have an opinion one way or the other?

Answer. Yes, sir.

Question. Who did you talk with? Any of the parties connected with the suit?

Answer. No, sir.

Question. Any of the witnesses?

Answer. No, sir. I don't know that I have. I have heard it talked among the citizens here a number of times.

Question. You say if the facts should turn out as you have heard they will, then you have an opinion?

Answer. Yes, sir.

M'r TELLER. We submit to the court the question whether he is competent or not.

By the COURT. I think he is competent.

129 Examination by M'r Reed, on part of defendant:

Question. M'r Nutt, you said that you had an opinion in the matter?

Answer. If such reports I heard were facts as stated.

Question. From what you have heard, have you a conviction or impression in regard to what ought to be the verdict in this case?

Answer. Don't know as I have heard any one state.

Question. Can you state that you have no opinion in regard to the merits?

Answer. I have on such reports as I have heard, outside statements, formed an opinion.

Question. Is that impression left on your mind from what you have heard?

Answer. Of course I would like to hear the evidence on both sides.

Question. Would it require any evidence to remove whatever impression or conviction you now have?

Answer. I think it would require evidence.

Question. It would require some evidence to allow you to start even with the case, would it?

Answer. Certainly.

130 Here the defendant challenged the juror Nutt for cause. The challenge was denied by the court, and defendant then and there excepted to the ruling of the court.

Among others were W. Perrin, was also sworn to true answers make to such questions as should be put to him touching his competency to sit as a juror on the trial of this case; and on being examined by M'r Teller for the plaintiff, answered as follows:

Question. You have heard the statement of this case?

Answer. Yes, sir.

Question. Where do you reside?

Answer. Nine miles east of here.

Question. On the creek?

Answer. About 2 miles south of the creek.

Question. What is your business?

Answer. A farmer.

Question. Do you know anything about the facts of this case?

Answer. I have heard about it.
Question. Have you formed and expressed an opinion?
Answer. I did both.
Question. How did you hear these facts?
131 Answer. I heard jurors talking of them before I came here before this term of court.
Question. From that did you form an opinion?
Answer. Yes, sir.
Question. Is it such an opinion as would influence you in making up your verdict? Could you try the case on the evidence?
Answer. I would endeavor to try it.
Plaintiff's counsel stated he had no challenge for cause.

Examination by M'r Reed, on part of defendant:

Question. You say that you talked with jurors that tried the case formerly?
Answer. Yes, sir.
Question. Did they give to you what they claimed to be a statement of the facts in the case?
Answer. Yes.
Question. Did they tell you what the result of the case was—the verdict?
Answer. I believe not.
Question. Do you know what the verdict was?
Answer. I have heard since; yes, sir.
Question. Did you hear it from the jurors?
Answer. No, sir.
132 Question. Then you have talked with other parties, have you not?
Answer. No, sir.
Question. You say you have both formed and expressed an opinion in regard to the merits of this controversy?
Answer. Yes, sir.
Question. You have an opinion now?
Answer. Well, I should say I had.
Question. With your present opinion and convictions that you now have, would it require testimony to remove them?
Answer. I think it would.
M'r Reed submitted to the court that he was not qualified.

By the court:

Question. Do you remember who you talked with about it?
Answer. One was M'r Evans, one of the jurors, with him some time ago.
Question. How long ago was that?
Answer. He was a juror on last trial.
Question. When did you have conversation with him?
Answer. It was some three weeks ago, I think.
Question. Did you and he have a pretty warm discussion upon the subject?
133 Answer. No, sir.
Question. Did you feel any considerable interest in the matter?
Answer. He told me just about the case; what he had found out here.
Question. Did you ever talk with any of the officers of either of these corporations?

Answer. No, sir; I don't know anything about them—don't know either of them.

Question. How long did you and Evans talk about it?

Answer. It must have been about an hour he was telling me about it.

Question. Did you ever talk with any one else?

Answer. Yes, sir; with—no, I listened to some conversation.

Question. Did M'r Evans comment upon the testimony to you?

Answer. No, sir.

Question. Did he express any opinion to you as to the credibility of the witnesses?

Answer. No, sir.

Question. Would what M'r Evans stated to you have any influence upon you if you are called to sit here as a juror?

Answer. Well, I think it would.

134 Question. You think you would be governed to some extent by what he said?

Answer. He related to me the fact as he considered.

Question. If called here as a juror, would you accept Evans' statement, or endeavor to give a verdict upon the evidence, as stated here?

Answer. Well, I would endeavor to do justice to all parties.

Question. What is your understanding in respect to the duty of a juror called to sit in a case?

Answer. He is to try it impartially.

Question. Is he to go by the evidence, or by what he heard some one else say outside?

Answer. By the evidence, certainly.

Question. Do you think that M'r Evans' statement would balance anything against the evidence in your mind if you came to sit here as a juror?

Answer. I don't know that it would.

135 Question. Do you know whether it would or not?

Answer. It has given me some prejudice in the case, of course, hearing his statement of it.

Question. Some prejudice?

Answer. Yes, sir.

Question. What do you mean by that, M'r Perrin?

Answer. Well, that I was biased to one side.

Question. You mean that you have formed something of an opinion upon that?

Answer. Yes, sir.

Question. Could you recount the facts as M'r Evans gave them to you now?

Answer. I believe I could.

Question. Could you state about what he said to you?

Answer. No; I could not, the very words, but the substance of it.

Question. The substance of it?

Answer. I think I could.

By the court:

Well, I think he is competent.

Here the defendant challenged the juror, W. Perrin, for cause.

136 The court denied the challenge, and the defendant then and there excepted to the ruling of the court.

On the trial of this cause the plaintiff, to maintain the issues on its part, gave in evidence to the jury as follows:

First, the deposition of George K. Sabin, which is as follows:

In district court, 2d judicial district.

TERRITORY OF COLORADO,
County of Jefferson, ss:

THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado,
vs.
THE UNION GOLD-MINING COMPANY, OF Colorado.

Henry M. Teller, being first duly sworn, deposes and says that he is one of the attorneys of the above-named Rocky Mountain National Bank of Central City, Colorado, plaintiff, and that George K. Sabin is a material witness for the said plaintiff on the trial of the above-entitled
137 cause; that George K. Sabin is a resident of the county of Gilpin, and that the above-entitled cause is now pending in the county of Jefferson, and affiant believes said cause will be tried at the next November term of the district court of Jefferson County, and that the said plaintiff is desirous of taking the deposition of the said George K. Sabin, to be read in evidence on the trial of the said cause on the part of the plaintiff.

HENRY M. TELLER.

Subscribed and sworn to before me this 20th day of October, A. D. 1873.

[NOTARY SEAL.] HARPER M. ORAHOOD,
Notary Public.

Filed Oct. 20, 1873.

J. R. CLEAVELAND, *Clerk.*

TERRITORY OF COLORADO,
County of Gilpin, ss:

Whereas The Rocky Mountain National Bank of Central City, Colorado, has filed the affidavit of Henry M. Teller of the pending of a certain suit in the district court of Jefferson County, Colorado, wherein the said Rocky Mountain National Bank of Central City, Colorado,
138 *are* plaintiff, and The Union Gold-Mining Company, of Colorado, is defendant, and by which affidavit it appears that George K. Sabin is a material witness for said plaintiff on the trial of said cause:

Now, therefore, the people of the Territory of Colorado to George K. Sabin, greeting:

You are hereby commanded that, all business & excuses being laid aside, you be and appear in your own proper person before the undersigned, clerk of the second judicial district of said Colorado Territory, on the 31st day of October, A. D. 1873, at 9 o'clock a. m., at my office, in Central City, in said Territory, to testify and give evidence in said matter in controversy in said suit now pending and undetermined in said Jefferson County, wherein said Rocky Mountain National Bank of Central City, Colorado, is plaintiff, and The Union Gold-Mining
139 Company, of Colorado, is defendant, according to the best of your knowledge, on the part and behalf of the said plaintiff, and hereof fail not under the penalty of what the law directs.

Given under my hand & the seal of the said court of said second judicial district this 20th day of October, A. D. 1873.

[SEAL OF THE COURT.] JOHN R. CLEAVELAND, *Clerk.*

Filed Oct. 20th, 1873.

J. R. CLEAVELAND, *Clerk.*

TERRITORY OF COLORADO,
Gilpin County, ss:

I have duly served the above writ by reading the same to George K. Sabin this 20th day of October, A. D. 1873.

CHARLES STINLE, *Sheriff.*

Fees: Serv'e, 75; mil'age, 20; return, 75—$1.70.

140 TERRITORY OF COLORADO,
Gilpin County, ss:

The deposition of George K. Sabin, of the county of Gilpin, and Territory of Colorado, a witness of lawful age, produced, sworn, and examined upon his corporal oath, on the 31st day of October, A. D. 1873, by me, John R. Cleaveland, clerk of the district court of the second judicial district of Colorado, at my office, in Central City, in said county, in compliance with the subpœna hereto attached, to be used in a certain suit and matter in controversy now pending and undetermined in the district court within and for Jefferson County, in the Territory aforesaid, in behalf of the said plaintiff, in the case of The Rocky Mountain National Bank of Central City, plaintiff, vs. The Union Gold-Mining Company, of Colorado, defendant.

The said GEORGE K. SABIN, being first duly sworn by me as a witness in the said cause previous to the commencement of this examina-
141 tion, to testify the truth in relation to the matters in controversy so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name, age, residence, and occupation?

Answer. George K. Sabin; age, forty-three years; residence, Central City, and occupation, a miner.

Int. second. How long have you been engaged in mining?

Answer. Ever since the summer of 1860.

Int. third. Do you know the plaintiff and defendant?

Answer. I do.

Int. fourth. How long have you known them?

Answer. I have known the plaintiff since the organization of the bank, and the defendant I have known since April, 1865.

Int. fifth. What business was the defendant engaged in, if any, and where, in 1865?

142 Answer. It was engaged in mining, in Gilpin County.

Int. sixth. What time did it commence mining?

Answer. They commenced mining some time in 1864.

Int. seventh. Who had charge of the company in the Territory when they first commenced mining?

Answer. Col. Mallery.

Int. eighth. How long did he continue in charge of defendant?

Answer. Till some time in April, 1865.

Int. ninth. In what capacity did Col. Mallery act for the defendant?

Answer. He acted as the agent or superintendant of said company.

Int. tenth. Were you ever in the employ of the defendant? If so, when did you commence?

Answer. I was in the employ of the defendant; commenced in April, 1865; am not positive whether April or May; think it was April.

143 Int. eleventh. In what capacity were you employed?

Answer. As superintendent.

Int. twelfth. How long did you continue in the employ of the company as its superintendent?

Answer. I continued in the employ of the company first until April, 1866; worked the property from the time of commencing until the fall of 1865; stopped work during winter of 1865, went to New York in March, 1866, and settled with company for salary in April, 1866; remained east until fall of 1866, then returned to Colorado, commenced work last in 1866, and continued until last of December, 1868, or the early part of 1869.

Int. thirteenth. Who, if any one, did you leave in charge of defendant's property when you went east?

Answer. John F. Topping.

Int. fourteenth. How and by whom was John F. Topping paid, if paid anything, for his services for defendant?

(Objected to by defendant, because it is irrelevant & improper,
144 & because it doesn't appear that he knows of the payment of his own knowledge; that any payment was made.)

Answer. John F. Topping was paid a certified certificate of deposit, placed to his credit by F. A. Potts, treasurer of defendant.

Int. fifteenth. To whom was that certificate delivered?

(Objected to by defendant, same reasons as before given.)

Answer. It was delivered by M'r Potts to me in New York, and left by me in Chicago with my brother for M'r Topping.

Int. sixteenth. Under whose direction, if any one's, did you leave defendant's property in the charge of John F. Topping when you went east?

Answer. I was directed by the defendant previous to leaving for the east to leave the property in charge of any one I thought proper.

Int. seventeenth. Who succeeded you in the management of the property of the defendant when you quit in the latter part of 1868 or first part of 1869?

145 (Objected to by defendant because it is irrelevant.)

Answer. I remained with the property so long as it was being worked. M'r Becker, president of defendant, was here at the time, but went east the next day after my final release from the company's property. I do not know who he left in charge, if any one.

Int. eighteenth. When was your final release from the company, spoken of in your last answer?

Answer. I think it was some time in March, 1869; can't fix the date.

Int. nineteenth. In what business was the defendant engaged in from April, 1865, to the fall of 1865?

Answer. Mining.

Int. twentieth. On what lode was the defendant mining?

Answer. Bates lode, Central City, Gilpin County, Colorado Territory.

Int. twenty-first. What business was the defendant engaged in after you commenced work in 1866?

Answer. Mining.

Int. twenty-second. On what lode?

146 Answer Bates lode.

Int. twenty-third. How long did the defendant continue to mine on the Bates lode?

Answer. Until December, 1868, or previous to March, 1869. I don't remember the exact time.

Int. twenty-fourth. What was the character of the work done by defendant during that time?

Answer. Taking ore from the mine and milling the same.

Int. twenty-fifth. In what capacity were you employed by the defend ant during that time?

Answer. I have always claimed to have been acting as its superintendant, taking charge of its mine and its mill.

(Answer objected to by defendant, because it is not responsive to the question.)

Int. twenty-sixth. Who was superintendent in Colorado of the defendant in the years 1867 & 1868?

(Objected to by defendant, because the same question substantially has just been asked, & the witness has answered the question as
147 asked in his own way, & because it is irrelevant and improper.)

Answer. As I stated above, in substance, I claimed to have been and acted in that capacity of superintendent.

Int. twenty-seventh. What were your duties while employed by defendant?

(Objected to by defendant, because it answers that he was employed in a particular capacity; the evidence does not show that he was employed in any particular capacity, and because it is irrelevant.)

Answer. To take charge of their mine and work under their directions.

Int. twenty-eighth. What salary, if any, was paid you by defendant?

(Objected to by defendant because it is irrelevant.)

Answer. I was paid thirty-five hundred dollars a year when actually working.

Int. twenty-ninth. Up to what time was that salary paid you?

(Objected to by defendant because it is irrelevant.)

Answer. From the time of commencing work in the spring of
148 1865, during the active working of the mine, until the work was stopped in the fall of 1865, and from that time to April, 1866, at the rate of one hundred dollars per month; received nothing during 1866, while absent. When I resumed work in November or December, 1866, and during the active working of 1867 and 1868, I charged the same salary as at first stated.

Int. thirtieth. Who was president of defendant in 1867, 1868, & 1869?

Answer. Theodore H. Becker.

Int. thirty-first. Did you have any settlement with the defendant through Theodore H. Becker, as president, in March, 1869?

Answer. I did.

Int. thirty-second. Was anything paid you at that time on account of salary?

(Objected to by defendant because it is irrelevant and improper.)

149 Answer. I was paid balance due at the time of settlement, in March, 1869; part was on account of salary and part on something else.

Int. thirty-third. What other account was included in that settlement besides the salary?

(Objected to by defendant immaterial and improper.)

Answer. Rent of an engine used for hoisting on the mine.

Int. thirty-fourth. Where did the settlement take place, and who was present?

(Objected to by defendant as before.)

Answer. In the Rocky Mountain National Bank, and I think M'r Potter and M'r Goodspeed were present.

Int. thirty-fifth. Did the defendant have an office in Central City in 1861, while Mallery was superintendent? If so, where?

(Defendant objects, because irrelevant.)

Answer. He did; his office was on Lawrence street.

Int. thirty-sixth. Did Col. Mallery occupy that office?

(Defendants objects because irrelevant, and because it is a leading question.)

150 Answer. He did.

Int. thirty-seventh. Who occupied the office in 1865, after you took charge of the property of defendant?

Answer. I did.

Int. thirty-eighth. Who occupied the office in 1866, after you resumed work on the property of the defendant?

Answer. I occupied it.

Int. thirty-ninth. Up to what time did you occupy it?

Answer. During the years 1867 & 1868.

Int. fortieth. Was there anything on or about the building to indicate whose office it was?

Answer. A sign was on the building, "Office of the Union Gold-Mining Company."

Int. forty-first. Whereabouts on the building was the sign?

Answer. On the front of the building, on the left hand of the door.

Int. forty-second. Who occupied the building in the summer of 1864 and up to the spring of 1865?

Answer. Col. Mallery occupied the building in the spring of 1865.

151 Int. forty-third. In what name was the business of this defendant carried on in Gilpin County while you were in the employ of the defendant?

Answer. In the name of the Union Gold-Mining Company.

Int. forty-fourth. How long did this sign belonging to the office of the company remain there?

Answer. I don't know.

Int. forty-fifth. Was it there while you occupied the office?

Answer. It was.

Int. forty-sixth. Were any books of account kept by the defendant in Central City while you were in the employ of the defendant?

Answer. There was.

Int. forty-seventh. Who had these books in charge?

Answer. I had them in charge a portion of the time. They were kept in the Rocky Mountain National Bank a portion of the time, but they were in my charge all the time.

Int. forty-eighth. Who made the entries in these books?

152 Answer. Col. Joshua H. Gest made them in 1865. Frank Messinger kept them awhile, the exact date I cannot state; I think it was in 1867. M'r Goodspeed kept them a portion of the year 1867 & 1868.

Int. forty-ninth. Who was president of the defendant in the fall of 1866?

Answer. Samuel Bonell.

Int. fiftieth. Who was president in 1867?

Answer. I was informed that M'r Becker was elected president in April, 1867.

(Exception sustained.)

Int. fifty-first. How did you derive your information?

(Exception sustained.)

(Defendants objects, because it was hearsay evidence, and had no knowledge of the facts. Exceptions sustained.)

Answer. By a letter received from F. A. Potts.

Int. fifty-second. While you were in the employ of the defendant,

were you in correspondence with any of the officers of the defendant? If so, state who.

Answer. In 1865 I corresponded with M'r Croswell, president,
153 M'r Potts, treasurer. In 1867 & 1868 was in correspondence with T. H. Becker, president; but have had no correspondence with any other officer or member of the company since about the time of the election of M'r Becker as president in 1867.

Int. fifty-third. Why did you correspond with M'r Becker after he was elected president of the company?

Answer. Since my first acquaintance with M'r Becker I have corresponded with him. During his absence from here, having had charge of a portion of his property, it devolved upon me to keep him informed in relation to the property left in my care.

Int. fifty-fourth. Why did you correspond with M'r Becker and not with any of the other officers of the company after his election as president in 1867?

Answer. In my letter from M'r Potts informing me of M'r Becker's election he stated in the future M'r Becker would conduct the
154 correspondence.

Int. fifty-fifth. Did you receive any letters concerning the property of the defendant and the mining being carried on by the defendant from M'r Becker after he was elected president?

Answer. I did.

Int. fifty-sixth. How frequently did you receive such letters?

Answer. Sometimes three or four in a month, and sometimes would not get any for two or three months.

Int. fifty-seventh. Was M'r Becker here at any time after he was elected president during the year 1867 & 1868?

Answer. He was.

Int. fifty-eighth. How often was he here during that time, and how long did he remain each time?

Answer. He was here in May, 1867, and remained until June. He was back here again in December, same year; went East in January, 1868; came back in October, 1868; and went East in March, 1869.

155 Int. fifty-ninth. During the time when he was here was he ever present at the mine worked by the defendant; if so, how often?

Answer. He was at the mine frequently.

Int. sixtieth. While M'r Becker was here, during the years 1867 & 1868, did he visit the office of the defendant in Central City; if so, how often?

Answer. He did quite frequently.

Int. sixty-first. For what purpose did you occupy this office of defendant?

Answer. I occupied it for a business office. I did the business for the company there; also my own business.

Int. sixty-second. What business did you transact there for the defendant?

Answer. All of the company's office business, such as paying workmen and taking their receipts.

Int. sixty-third. In what names were the accounts of the workman kept?

(Exception sustained.)

(Defendant objected because it is not the best evidence. Exception sustained.)

Answer. In the name of the Union Gold-Mining Company.

156 Int. sixty-fourth. On whose account were these workman paid and by whom were they employed?

Answer. They were paid on the account of the Union Gold-Mining Company, and were employed by the same company.

Int. sixty-fifth. What business were they employed in?

Answer. Some of the men were employed at the mine and others at the mill.

Int. sixty-sixth. What was done with the ore mined from the mine?

Answer. The first class or smelting ore was sold to Mr. Hayes for a few weeks after first starting up, afterwards it was piled up in the shaft-house at the mine; the second-class, or mill ore, was crushed in the stamp-mills.

Int. sixty-seventh. What amount of first-class ore was piled up in the shaft-house at the mine January 1st, 1869?

(Defendant objects because it immaterial & irrelevant.)

Answer. I think our estimate was four hundred tons.

157 Int. sixty-eighth. What was the value of that first-class ore per ton?

(Defendant objects because it is irrelevant, and there is no foundation laid to show that he knew the value of it.)

Answer. My estimate of the value was based upon assays made, ranging from $40.00 to $600.00 per ton; said assays were made from samples selected from the pile at random. The average value I will call $100.00 per ton.

Int. sixty-ninth. Are you familiar with that kind of ore and its value?

(Defendant objects.)

Answer. I am more or less familiar with this class of ore, but its value can only be ascertained by assay from samples regularly taken.

Int. seventieth. When you quit work in December, 1868, from the mine of the defendant, was there any ore broken and left in the mine? If so, how much?

(Defendant objects.)

Answer. There was—our estimate of amount was about seventy-five cords, to my best recollection.

158 Int. seventy-first. About how many tons would there be?

(Defendant objects.)

Answer. Four hundred and fifty (450) tons.

Int. seventy-second. What was done with the proceeds of the ore sold to Hayes and mill-ore?

(Defendant objects.)

Answer. The proceeds of the ore sold to Hayes was applied to the general mining expenses. Gold from mill-ore was sold to Rocky Mountain National Bank, plaintiff, and proceeds from the sale of said gold was used in paying the general expenses of mining, hauling, and milling said ore.

Int. seventy-third. After you resumed work for the defendant, did you do any business with the plaintiff in the name and on account of the defendant?

(Defendant objects.)

Answer. I did.

Int. seventy-fourth. When did you commence doing such business with the plaintiff?

Answer. March 6, 1867.

159 Int. seventy-fifth. What was the nature of that business and how was it commenced?

Answer. Opened an account by a deposit of four hundred and forty-

three & $\frac{75}{100}$ dollars with the plaintiff; the nature of the business was in selling gold and checking against the proceeds.

Int. seventy-sixth. In whose name was the proceeds of gold so placed?

(Defendant objects.)

Answer. In the name of the Union Gold-Mining Company, the defendant.

Int. seventy-seventh. In whose name were these checks drawn?

(Defendant objects.)

Answer. In the name of the Union Gold-Mining Company; they signed "Union Gold-Mining Company," by Geo. K. Sabin, agent.

Int. seventy-eighth. How long did you continue to do business in that way in the name of the defendant with the plaintiff?

(Defendant objects.)

Answer. Until the end of December, 1868.

Int. seventy-ninth. How did you pay the men employed on the defendant's mine?

160 I paid them through the foreman; gave him check on bank for the amount due the men and took his receipt therefor.

Int. eightieth. Did you have any hauling ore down on account of defendant?

Answer. I did.

Int. eighty first. Where was the ore hauled from?

Answer. From the mine.

Int. eighty-second. How did you pay for said hauling?

Answer. In the same manner as I paid all other bills, by giving checks on the bank of plaintiff, signed in the name of defendant, by myself, agent.

Int. eighty-third. Did you while in the employ of the defendant purchase any supplies to be used in the carrying on the business of the defendant? If so, state what kind of supplies, how they were bought and paid for.

(Defendant objects.)

Answer. I purchased wood, timber, lumber, powder, fuse, steel,

161 candles, oil for lamps in the mill and machinery, quicksilver, &c. I paid all bills at the end of each month in the same manner as above stated, with checks.

Int. eighty-fourth. In whose name were those bills made?

(Defendant objects.)

Answer. In the name of the Union Gold Mining Company.

Int. eighty-fifth. Of whom were these supplies purchased?

(Defendant objects.)

Answer. Rowarth & Co., Treas. Tappan, Hanchett & Schram, Clapp, Raynolds, Newell, and others.

Int. eighty-sixth. How long did you continue to buy supplies in that way?

(Defendant objects.)

Answer. As long as I remained in full charge of the property.

Int. eighty-seventh. How was the hoisting done at the mine?

Answer. The ore was raised from the mine with an engine.

Int. eighty-eighth. Whose engine was it?

(Defendant objects.)

162 Answer. A portion of the time with an engine belonging to the Union Gold-Mining Company, and a portion of the time with an engine belonging to myself.

Int. eighty-ninth. When was your engine put in the mine?

(Defendants objects.)

Answer. October 15th, 1867.

Int. ninetieth. Did you know of any indebtedness from the defendant to the plaintiff during the year 1867 or 1868?

(Defendant objects.)

Answer. I did, during 1868.

Int. ninety-first. State how such debt was created?

(Defendant objects.)

Answer. By my drawing checks on the plaintiff in the name of the defendant, when defendant had no money there and plaintiff paying the same.

Int. ninety-second. For what purpose were these checks drawn?

(Defendant objects.)

Answer. For carrying on a general business of mining and milling of the defendant.

163 Int. ninety-third. When was this indebtedness commenced?

(Defendant objects.)

Answer. After April 1st, 1868.

Int. ninety-fourth. Had there been any indebtedness from the defendant to plaintiff previous to April, 1868; if so, state when and how it was made?

(Defendant objects.)

Answer. I think there was a small indebtedness some time in 1867, and was made in the same manner as above described.

Int. ninety-fifth. For what purpose was that indebtedness made?

(Defendant objects.)

Answer. For the same purpose as described above, for carrying on the works of the company.

Int. ninety-sixth. Was that indebtedness paid; if so, how was it paid?

(Defendant objects.)

Answer. It was paid from the proceeds of the mine.

Int. ninety-seventh. Was there any indebtedness of the defendant to the plaintiff in September, 1868? If so, state what amount.

164 (Defendant objects.)

Answer. There was an indebtedness; don't remember the exact amount.

Int. ninety-eighth. Was there any indebtedness of the defendant to the plaintiff at the first of October? If so, state the amount.

(Def't objects.)

Ans. There was; but I don't remember the amount.

Int. ninety-ninth. Was this indebtedness increased or decreased in November or December, 1868, & if so, which?

(Def't objects.)

Answer. It was both increased and decreased during that time.

Int. one hundredth. Explain what you mean by stating it was both increased and decreased during that time?

(Defendant objects.)

Answer. Increased by greater overdraughts and decreased by payments.

Int. one hundred & first. What was the total indebtedness of the defendant to the plaintiff in December, 1868?

(Defendant objects.)

165 Answer. A little over twenty-three thousand dollars.

Int. one hundred and second. Did you ever notify M'r Becker, the president of the defendant, that the defendant was in debt, incurred in carrying on its business of mining and milling; if so, when?

(Defendant objects.)

Answer. I told M'r Becker, on his return about the first of October, we were overdrawn at the bank.

Int. one hundred and third. Had you received any communications from M'r Becker concerning the indebtedness of the defendant previous to the first of October, 1868?

(Defendant objects.)

Answer. I had received some letters concerning the defendant' affairs and pertaining to its indebtedness.

Int. one hundred and fourth. What disposition was made of
166 these checks spoken of by you as made by the defendant on the plaintiff?

(Defendant objects.)

Answer. A portion was returned to me, and a portion was kept by the bank; some of the last ones were kept.

Int. one hundred and fifth. Did you ever examine these checks after they were paid by the plaintiff?

Answer. I did.

Int. one hundred and sixth. When you gave checks on the plaintiff on account of defendant, did you take any receipt from the parties to whom the checks were given?

(Defendants objects.)

Answer. I did.

Int. one hundred and seventh. Have you any of these receipts now? If so, produce one or more.

(Defendant objects.)

Answer. I have them in my possession; but I am unwilling to part with them, as they are my vouchers.

167 Int. one hundred and eighth. Will you produce a copy of one of those receipts?

(Exception sustained.)

Answer. I have no objection to giving a copy.

(Exception sustained.)

Int. one hundred and ninth. Produce a copy.

(Exception sustained.)

Defendant objects to introducing of copy: First, there has been no proper foundation laid for the introduction of a copy; second, the original is not competent testimony.

Answer. A copy was produced as follows:

No. 56.

OFFICE OF UNION GOLD-MINING COMPANY,
Central City, December 24, 1868.

Received of Union Gold-Mining Company two hundred fifty dollars. $250.00.

J. M. RANK.

(Exception sustained.)

Int. one hundred and nine and one-half. Is that a copy of a receipt now in your possession?

Answer. It is.

(Exception sustained.)

Int. one hundred and nine and three-fo'rths. Will you produce the original of which this is a copy?

Answer. I decline to do it.

(Exception sustained.)

168 One hundred and tenth. In whose name was these receipts taken?

(Defendant objects. Exception sustained.)

Answer. Union Gold-Mining Company, defendant.

(Exception sustained.)

Int. one hundred and eleventh. When M'r Becker came here in October, 1868, what was defendant doing?

(Defendant objects.)

Answer. Mining and milling ore taken from the mine.

Int. one hundred and twelfth. How long did the defendant continue to mine and mill ore?

(Defendant objects.)

Answer. Through the balance of the year.

Int. one hundred and thirteenth. How much ore was milled after Becker came here in October, 1868?

(Defendant objects.)

Answer. I don't know.

Int. one hundred and fourteenth. Did you continue to mill ore all the time after Becker came here in October, 1868, until the end of the year?

Answer. Did not run mill all the time.

Int. one hundred and fifteenth. Did you run all the mill-ore
169 broken in the mine after Becker came here in October 1868?

(Defendant objects.)

Answer. I did not.

Int. one hundred and sixteenth. What was the character of the seventy-five cords of ore you have testified was broken and left in the mine?

(Defendant objects.)

Answer. The ore was not sorted; it so contained both smelting and mill-ore.

Int. one hundred and seventeenth. How many men was the defendant working October, 1868?

(Defendant objects.)

Answer. Probably from fifteen to twenty at the mine.

Int. one hundred and eighteenth. How many in all?

(Defendant objects.)

Answer. Probably from twenty-five to twenty-eight; the positive number I cannot state.

Int. one hundred and nineteenth. Was this force increased or decreased after Mr. Becker came here in 1868; if so, which?

170 (Defendant objects.)

Answer. I don't remember whether it was increased or decreased, or either.

Int. one hundred twentieth. Was Mr. Becker about the mine after he came here in October, 1868, and before the middle of December, 1868; if so, how frequently?

(Defendant objects.)

Answer. Mr. Becker spent most of his time at the mill; cannot tell whether he was at the mine or not, but presume he was.

Int. one hundred and twenty-first. How far is the mill spoken of from the mine?

(Defendant objects.)

Answer. From a quarter to one half of a mile.

Int. one hundred and twenty-second. How far was the office of the defendant from the mine?

(Defendant objects.)

Answer. About one-half a mile.

Int. one hundred and twenty third. Have you the books of the defendant, kept while you were in its employ, in your possession?

171 Answer. I have not.

Int. one hundred and twenty-fourth. Who has, then?

Answer. I don't know.

Int. one hundred and twenty-fifth. Will you state what was the method of making entries in the books of the defendant while in the employ of the defendant, or having them made?

Answer. I gave the amount for entries on the books from the vouchers.

Int. one hundred and twenty-sixth. After the entries were made on the books, who took charge of the vouchers?

(Defendant objects.)

Answer. I did.

Int. one hundred and twenty-seventh. Were these books and vouchers ever examined by any officer of defendant; if so, by whom and where?

(Defendant objects.)

Answer. I do not think any officer or member of the defendant ever examined the books after Goodspeed kept them; think my vouchers were examined by M'r Becker some time between the first of

172 November, 1868, and first of March, 1869.

Int. one hundred and twenty-eighth. Did any one assist M'r Becker in the examination of the vouchers?

Answer. I think there was a man with him; I never was present.

Int. one hundred and twenty-ninth. At any time after the middle of December, 1868, was there any arrangement made by you with the plaintiff to open a new account on the part of the defendant? If so, state what such arrangement was.

(Defendant objects.)

Answer. In December, 1868, I made an arrangement with M'r C. B. Kountze, on the part of the plaintiff, to open a new account; was to check against the new account for current expenses of mining and milling at the end of each month, after paying the current expenses; whatever surplus was remaining I agreed to place to the credit of the old account, in accordance with this new arrangement. I opened a

173 new account the next day, after having made the arrangement by depositing some money; drew three checks against the same; two of these were rejected, and one was paid.

Int. one hundred and thirtieth. Where was this arrangement made?

(Defendants objects.)

Answer. In the room adjoining the bank of plaintiff.

Int. one hundred and thirty-first. Who was present at the time of making that arrangement?

(Defendant objects.)

Answer. M'r Becker.

Int. one hundred and thirty second. In whose name was this new account made?

(Defendant objects.)

Answer. In the name of the defendant.

Int. one hundred and thirty-third. What disposition was made of the balance of the deposit after paying the check you say was paid?

(Defendant objects. Exception sustained.)

Answer. I suppose it was placed to the credit of the old account.

(Exception sustained.)

Int. one hundred and thirty-fourth. What was the amount of that credit?

174 (Defendant objects. Exception sustained.)
It was about twenty-two hundred dollars.
(Exception sustained.)
Int. one hundred and thirty-fifth. Do you know the handwriting of M'r Becker?
Answer. I do.
Int. one hundred and thirty-sixth. Have you seen him write?
Answer. I have.
Int. one hundred and thirty-seventh. Have you received letters from him?
Answer. I have.
Int. one hundred and thirty-eighth. Look at these several letters now handed you, and state in whose handwriting they are.
(Defendant objects, first, it is not a proper manner of identifying.)
Answer. They are in the handwriting of M'r Becker.
Int. one hundred and thirty-ninth. In whose handwriting is the signature to these several letters?
(Defendant objects.)
Answer. M'r Becker.
Int. one hundred and fortieth. To whom are these letters directed?
175 (Defendants objects, because there are no envelopes and nothing to show to whom they are directed.)
Answer. Addressed to me.
Int. one hundred and forty-first. Have you ever seen those letters before; if so, when?
(Defendant objects.)
Answer. I have seen them several times; I have seen them in court.
Int. one hundred and forty-second. Were they received by you; if so, how?
(Defendant objects.)
Answer. They were, either through the mail or by express.
Int. one hundred and forty-third. Are there any marks on these letters by which you can describe them? If so, state what they are.
(Defendant objects.)
Answer. There are marks; one marked letter "A," dated April 13th, 1868; one marked letter "B," dated May 17, 1868; one marked letter "C," dated April 13th, '68; one marked letter "F," dated April
176 8th, 1868; one marked letter "G," dated Mar. 29, 1868; one marked letter "H," dated February 9, 1868; one letter marked letter "J," dated May 12th, 1867. There are seven letters in all referred to.
Int. one hundred and forty-fourth. Hand the several letters last mentioned by you to the clerk, M'r Cleaveland, now engaged in taking this deposition, to be attached to your deposition.
(Defendant objects: 1st, object to letter marked "A," because it is no part of the res gesta; 2nd, it is written on a subject entirely foreign to the one in controversy, and in no manner relates to any transactions between plaintiff and defendant; 3d, it is not a full letter, and no signature, but only a part of a letter; 4th, because it was written before there was any debt contracted with the plaintiff.
Object to letter marked "B," 1st, because it is not a full letter,
177 but only a part; 2nd, no part of the res gesta; does not relate to the matter in controversy.
Object to letter marked "C," the same objections as to letter A, with the exception of the want of a signature. Objections to letter marked

"F," that it is no part of the res gesta; that it does not relate to the dealings of plaintiff, and is written upon a subject entirely foreign to the matter in controversy; it was written before there was any debt contracted with plaintiff.

Objects to letter marked "G;" same special objections as to letter "F."

Objects to letter marked "H," that *is it* only a fragment of a letter; it bears no signature, is no part of the res gesta, and does not relate to the matter in controversy nor to any dealings with the plaintiff.

Object to letter marked "J," that it was written nearly a year before there was any debt due the plaintiff; that it is no part of the res gesta, but written on private matters entirely disconnected with the matter in controversy.

178 To all of them except letter C, that they are not official but private letters. To all of them, that they were not written to plaintiff, and it has not been shown that plaintiff knew of their existence until long after its transactions with the witness Sabin. To all of them, that they are not competent evidence for any purpose in this suit.)

A.—J. R. Cleaveland, clerk.

ASTOR HOUSE, NEW YORK.
April 13, 1868.

Fr*ei*nd SABIN: The finance committee of our board decided to-day to authorize you to employ att'ys and defend our company in the suit began by the Rocky Mountain Company; so please see Mess'rs Royle & Butler, and ask them what their fees will be and retain them. Tell them that I have suggested that in answer we should deny that they, plaintiff, own any property whatever on the Bates lode.

179 You will see from the abstract that M'r Sayr will make for you what kind of title they have. Tell Mess'rs Royl & Butler that you are and will be a witness in the case, & that you do not wish to give bonds or go security, so that you will be compromised as a witness. State to them all the facts; that I can claim and hold all of claim No. 3 on the Bates; that I have owned, held, claimed, and worked it ever since July & December, 1860, & perfected my last title to the last 40 feet only last fall; that I worked it in 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, & 1868. I have bills, receipts, & will produce witnesses to prove all I say.

Tell them, while you are the authorized agent of the U. G. M. Co., you do not nor have not worked No. 3 for said company, but, as George K. Sabin, you have worked the property for T. H. Becker, the only owner and legal claimant; that I, T. H. Becker, employed you to work said No. 3; that the Union Company does not now own it nor never did, and further, that I, T. H. Becker, does hereby authorize and employ you to hold and claim and work the same for him, and if anybody is dissatisfied, or has better claims, all they have to do is to get out an

180 injunction and stop the work. But if this is done be sure to have them give good approved security, as I propose to test this matter with my bottom dollar. Have M'r Hal. Sayr survey the 300 feet on the surface, and if the 300 feet comes up the shaft that was filled with toilings, don't let anybody work on any part of the 300 feet; remember, 300 feet, horizontal measure.

I am glad that this suit was brought; hope they won't withdraw it. It's high time we all know how much we all had. All I want is my own; and if any one can show a better title than I can, I assure you I will give it up without a word and pay all costs. "Render unto Cesar that

which is Cesar's," and "Do unto others as you would have others do unto you," I adopt as my will. These rules were good centuries ago, are good to-day, and will be ad 'finitum.

Follow all the instructions of your attorneys, Mess'rs Royle & Butler. It may be best that I should join the U. G. M. Co. in defence, but any way retain Royle & Butler for the defence of all our rights
181 to that 300 feet, horizontal measure; that will cover it all. Retain them to defend the title to the whole 300 feet. I see that M'r Willard Teller swears to the suit; that was done to keep Col. Lamont as a witness. Let Royle & Butler swear to the answer, so you can act as a witness. Tell them you don't own one dollar of the U. G. M. Co. stock, and that you have not a dollar of interest in the with me. So you see you are a witness.

Besides this, the Union Company does not elevate the ore; it's your engine & elevators; explain it all just as it is. I would come out at once, but you know I am to' busy about that Albany matter. Continue to work No. 3 and report progress. I guess Col. L. can't prove the U. G. M. Co. ever paid for or worked or removed anything out of No. 3. I wonder that he ever permitted himself to be induced to commence so fatal a suit. I thought him too sharp for that.

Explain all to the lawyers. Mr. Butler is a M. M. Make a firm bargain with the lawyers about the fees. It may be best for them to answer and get it continued until I can come out. I simply suggest this;
182 they will know the best and will use their judgment about it. Keep the Rocky Mountain Co. abstract to show Mess' Royle & Butler what title they have. I will send our abstract from here; I had one made before I left.

Cee

B.—J. R. Cleaveland, clerk.

ASTOR HOUSE, NEW YORK,
May 17, 1868.

FRIEND SABIN: I wrote you a few days ago, saying that the legislature had adjourned & all was right in that quarters. This week I clear my matters here, & then I will be in for a week or so, getting my matters arranged there. Then I will go by my old K'y home & come out to Colorado.

I hope you have the big stamp up by this time and the pans (). I do hope you will give Elliot a job: ask him what he can do, what he wants to do, what he will do, and give him what he wants, so as to have him at something. I can hardly describe how I felt when you wrote me you were getting behindhand. I honestly & candidly believe on our success depends the success of Colorado.

183 If we go behindhand, then there is no use of trying. If the best superintendant, with the best mill & men & the best mine in Colorado, can't pay expenses, then truly Colorado is a humbug. There must be an end of this, and the sooner we see it and prepare for it the better. Let's look this matter square in the face. Is there no way to curtail? Is the price of hauling to the low-water mark? Is the price of powder at the lowest figures? Is the price of men at the lowest figures? Is there no way of running the mill faster, or at less expense?

If you have tried, and there is no way to render expenses below the

yield, then stop at once. Why run in debt? This is serious. It must come. Why wait? It's plain enough. Do think of this seriously, and make up your mind and write me fully what your views are & let's be prompt with each other. Probably, if we shut down, our men may look around for a better place, and probably they will find it; and when provision gets cheaper, and powder gets cheaper, & all gets cheaper, & more gold grows in the mine, then we can start up again.

184 Figure this all up and write me what you think, and discharge a few men every week, so as to come down easy, if you can't make it pay.

Friend Sabin, it must come to this, and we must do it in self-defence. Remember our characters as business men prefer this course. If we fall Colorado goes up, dead sure. Because anybody will say, if the best manager, best mill, and best men won't pay, who will trust Colorado? Echo says, who?

Hoping you will begin at once to curtail, get out of debt, I close as ever yours,

O'b't s'v't,

T. H. BECKER.

Don't fail to ask Mr. Elliot to tell you what he wants to do, what he can do; and give him a job & pay him every week. We need him & John for future operations.

J. R. Cleaveland, clerk.

OFFICE OF THE UNION GOLD-MINING CO.,
No. 100 Broadway, New York, April 13th, '68.

GEORGE K. SABIN, Esq.,
Superintendent of Union Gold Mining Company of Colorado, at Central City, Colorado:

185 DEAR SIR: You are hereby authorized to retain the services of some good attorney to answer and defend in the cause wherein the Rocky Mountain Gold-Mining Company appear as plaintiff, and the Union Company as defendant. If Mess'rs Boyle & Butler are not already retained it is suggested that you give them the preference.

Very respectf., your ob't s'v't,

T. H. BECKER,
President U. G. M. Co.

F.—J. R. Cleaveland, clerk.

ALBANY, NEW YORK,
Wednesday, April 8th, '68.

FRIEND SABIN: Our election came off on the 6th, and resulted in the unanimous election of the old board on the 7th, (yesterday.) The old board met and re-elected the same officers—T. H. Becker, pres.; Ja's M. Mann, v. pres.; F. A. Potts, treasurer; J. H. Motser, sec't'y.

I am here to-day to defeat W. W. Wright's bill. He seeing this
186 finally consented to withdraw it, and we have just had a meeting, the judiciary committee, and ordered its withdrawal; so I *I* hope you will put the stamps up as soon as possible so as to save as many hands as possible. Be sure and save all the tailings, & try the pans, and give Elliot a job & pay Elliot every week. He is dead broke and I need him.

I will come out as soon as I can, but you know I must fix my matters (at Washington, you understand) before I come. But don't mention my trip there. I will send you the belt next week by express. I will call a meeting of the board on Monday next and give you full instructions about the suit. Glad they begun it as they did. Will see how they will take the joke before they get done.

Sorry such a gentleman as Col. Lannant did not look before he leaped. I guess he will find out his mistake when he investigates the matter thoroughly. But time will tell. We propose to defend. I will write you the full determination and decision of the board. Please go
187 to Hal Sayr and have him send me an abstract of the Rocky Mountain Co. title to their claims on the Bates, also a copy of any leases or mortgages on the records against the Rocky Mountain Co., as I understand their property is all **mort**gaged. Hurry it up; we want to *to* get in an answer before the May term.

Remember me kindly to all the men at the mill, mine, and M'r Daws, Thompson, Rank, Graham, and I wish you would write me promptly how much you can save per week over and above all expenses, if any. Is it possible to save up enough to open the co. claims on the Hunter or Bates? Calculate closely, and use every economy, and try and see what you can do towards saving up, so we can open another mine.

Write often, and *except* my kindest regards for yourself.

Yours, truly,

T. H. BECKER.

Direct T. H. Becker, care of Astor House, New York.

188 J. R. Cleveland, clerk.

NEW YORK, *March* 29, 1868.

FRIEND SABIN: I have just heard that our friend W. W. Wright have had introduced a bill in the New York legislature to allow the Union G. Mining Co. to so amend their charter so as to allow the *ma*jority stockholders a voice in their board of trustees, and that he has sent a force of his to Colorado to take possession of the Union co. property in case he gets this bill passed.

Now, by g——, this is refreshingly cool. I will see this jalorky dam'd first; so hold your grip. I propose to fight it out on this or any line. I don't know this word fail; so defy any one, all, and hold your grip. I hope you will first of all not go into debt, and that you will put up our big stamps at once, and buy two (Bartoles) and set them up up-stairs in the mill, and try our Blanklings—give them a fair trial—and give Elliot a place and a salary and pay him every week. Put him on
189 any light work that he can stand easy; so give Elliot a job and pay him every week. I have just received your two letters in are about the one ton a day. M'r Kip came yesterday and says he has a letter for me from you; he will get it for me to-morrow.

Yours,

BECKER.

H.—J. R. Cleaveland, clerk.

ASTOR HOUSE, NEW YORK.
July 9th, 1868.

FRIEND SABIN: On my arrival here I found and paid the (Kountze bank note) and left town on business. I am now back again, and found both your notes and it all right. I do hope you' next will say all the

debts are paid; that is of the first importance. I found all our people well posted in our proceedings through M'r Hays and others. One of the consolidating Gregory men called to see me yesterday, and made particular enquiry about Colorado matters.

Colorado matters stand d—d low here, and the Coloradians don't stand much better. Grasshopper's flints and State-gas is too
190 transparent. Stockholders want gold; that's what they "went for," not grasshopper flints nor States. Throw on a few cards out of the old "deck" of Coloradians left here, but they all seem to be engaged in "showing" some other "matter." M'r Lyon seems to be the "livest man" of all the party. He has two "big things" on hand—Nevada Rose River County," and the other in "Carolina."

There is plenty of money here for city movements, but none for grasshoppers and flood countries. Our plan is the only true, strai't-forward mining plan, and will pay all around honestly and squarely. So do get out of debt. You know it is a ter'ible sacrifice to hire outside mills and loose all the tailings and blanketing, in the dead of winter, to pay a debt for the hire of men who don't care a dam' for you only for the money they get. We will loose fully $50,000 worth of ore to pay this debt. But pay it; and then, if our mill won't pay expenses, shut down and discharge each and all; yes, every man. But pay the debt first,
191 and then make up your mind to make our mill keep you out of debt; and if it don't, be firm and close up.

Although we have the best mine in Colorado, we can't afford to sacrifice every cent to retain them. Remember we have from 20 to 30 men, who receive from $100 to $200 per month, and that I have worked body and mind for years to accomplish this, and that I have not yet received one dollar for myself. True, the mine is opened, looks well, and promises well, but if my energies or health should fail, or if I should die, where would all my labors be?

I am greived and perplexed to think such is the case, but it is too true to be hid; but it is never too late to alter, amend, and improve. So let's you and I begin to look matters squarely in the face, and begin to work a little half by for ourselves. So, firstly, let's get out of debt, and then add just such improvements to our own mill as will enable it to pay all expenses within itself and a little for us. I believe you collected all that was collected from Mess'rs McIntire and Conley, and used it paying debts contracted for fixing mill. After all was done I got
192 eight (8) dollars from McIntire; that is all I ever had from Colorado, except the sale, and have paid thousands for my own expenses.

I simply mention these facts for fear, in case I was indicated for lunacy, you might appear and give evidence that I was sane on this point, and to show I had honestly and willingly put in years of time and labor and thousands of dollars, and so far had only got 8 dollars in real money.

Now for the moral: let's get out of debt, and if we can't make our own mill pay all expenses and a little for us, me two, let's shut her down. Then it might occur that by certain curtailments of expenses and certain economical improvements in labor-saving machines, we might keep out of debt, pay owners as well as hands, and keep a treasury ahead.

I find it will take several weeks to accomplish the object of my visit here, as both of men are hard up and can't get away just now.

I never saw New York so dead; I never saw or heard of so many people out of employment; I never saw money so scarce; I never saw Colorado and mining enterprises so dead.

So now, friend Sabin, the storm is almost on us; furl your sails;
193 tell your sailors to stand firm; discharge all unnecessary men, and read the law to the remainder, and we will stand any storm that comes. The captain is here at his post and will see her through. I do hope your next will say I am out of debt. Then curtail, retrench, refrain.

I will send you the plan for the big stamps in a few days. It is the thing; has worked well: run for 10 years without repairs. Tell M'r Dans I will see M'r G. and get his papers just so soon as M'r S. returns to the city.

Remember me kindly to all our men, and *except* for yourself the kindest regards of your ob't s'v't.

T. H. BECKER.

I am now here on the soil, and will forward matters to Denver at once. See Henry Clements and tell him to work up that Hall matter for he, you, and I. Keep me posted, so I can get prepared to advance the money.

J.—J. R. Cleaveland, clerk.

S'T LOUIS, *May 12th*, 1868.

FRIEND SABIN: I wrote you two most important letters in February, last week, one in regard to my taxes, urging you to pay them at once, and the other requesting you to quit all business and buy some
194 stock in a certain concern. As I never had a reply, I concluded some busybody had inter'upted both letters and that you did not either; and so concluding, I feard to write again, for fear of a similar mishap. This is the reason of my long silence.

I now expect to be in Central City within 10 days; but before I get there I wish you immediately on receipt of this to go up and see R. D. Darlington and offer him just five hundred ($500) dollars for his claim against me and Douglas. He holds our conditional note for $1,000; but in his mistakes, he mismanaged matters by advice of misguided men, and has failed to get one cent yet, and may fail altogether if I choose.

But I do not wish to wrong him out of one cent. But if he will sell you the claim for $500 you buy it, and I will hand you the money on my arrival, and then with the remaining $500 I can buy him to do right, which will only be justice with us both, thereby settling a long dispute and putting you to little or no trouble.

Please do as I ask, and buy it all in your own name for $500,
195 and have it regularly transferred to you by taking the note in your own hands. It is signed by myself, T. H. Becker, and S. S. Douglas.

Don't make any other promises. Take it clean for $500. He got M'r Merse to sign on it once, but it was mismanaged—flashed in the pan; so ma'by Merse *his* the note. Make him (Doylton) get it, if he takes the $500, and please don't tell anybody I am coming so soon, as I may be delayed a little longer here.

I hope you have paid my taxes, if you haven't bo't the stock. But buy this note from Doylton anyhow at $500 if he will sell. I understand he is desperately in need of funds. He has offered it to others at $500.00.

I wrote you from New York last week, but fearing this may be nabbed, I send it through M'r Elliott, and he will hand it to you opened. If not detained here I will be along in a few days after you get this; so be spry and clear this matter at once with Doylton. You can tell him we are on a trade and you can put the claim in. M'r Potts wrote you

before I left N. York. Please don't fail to try to mention the shipments. Never go backward, and if M'r Lyons buys any more ore would
196 they rather give you drafts on N. York. This will save them exchange to get money to Colorado, and save us exchange to send to New York. Let's manage them all we can.

Hoping to see you very soon, I close, as ever, your ob't s'v't,

T. H. BECKER.

The several letters above referred to are handed to me by the witness and hereto attached to this deposition, and that I have written my name on each of them.

Int. one hundred and forty-fifth. Examine the several letters-envelopes handed you and state to whom they are addressed and whose handwriting the address is.

(Defendant objects. Exception sustained.)

Answer. They are addressed to me, and in M'r Becker's handwriting.

(Exception sustained.)

Int. one hundred and forty-sixth. Were these envelopes ever received by you; if so, how?

(Defendant objects. Exception sustained.)

197 Answer. They were received by me by mail or express.

(Exception sustained.)

Int. one hundred and forty-seventh. Where did you receive these envelopes?

(Defendant objects. Exception sustained.)

Answer. Do not know the date that I received any one of them.

(Exception sustained.)

Int. one hundred and forty-eighth. Were they received before or after January 1st, 1869?

(Defendant objects. Exception sustained.)

Answer. I cannot identify any marks by which I can tell when they were received.

(Exception sustained.)

Int. one hundred and forty-ninth. How many of these letter-envelopes are there handed to you?

(Def't objects. Exception sustained.)

Answer. Nine.

Int. one hundred and fiftieth. Hand them to the clerk, Mr. Cleaveland, now engaged in taking this deposition.

(Defendant objects. First, that there is no evidence that they ever contained any letters. Second, that there is no evidence to show
198 in what year or years they were addressed or received. Third, that there is no evidence that plaintiff knew of their existence until after its transaction with Sabin were closed. Fourth, there is no evidence that they were not addressed and received while Sabin was the superintendent of defendant, prior to April, 1866. Fifth, that they are not competent evidence for any purpose whatever. Exception sustained.)

Nine letter-envelopes, addressed:

Via Chicago and Omaha.

G. K. SABIN,
U. G. M. Co.,
CENTRAL CITY,
Mountain City P. O.,
Colorado Territory.

J. R. CLEAVELAND.

The several letter-envelopes above referred to are handed to me by the witness, and hereto attached to this deposition, and that I have written my name on each of them.

(Exception sustained.)

Int. one hundred and fifty-first. Who was foreman of the defendant at the mine in October, 1868?

199 (Defendant objects.)

Answer. George Mellor.

Int. one hundred and fifty-second. Look at the check handed you. State who signed it, and for what purpose, if you know.

(Defendant objects.)

Answer. I signed the check; the money was to pay the men at the mine.

Int. one hundred and fifty-third. Was the payee of the check at the time of making the check in the employee of the defendant; if so, in what capacity?

(Defendant objects.)

Answer. He was the mining foreman of the defendant.

Int. one hundred and fifty-fourth. Hand that check to the clerk, Mr. Cleave'and, and to attach to the deposition.

(Defendant objects. That there has been no authority shown for Sabins to sign checks in the name of the defendant. 2nd. No authority shown from defendant to plaintiff to pay checks drawn by Sabin, the witness.)

200 The check above referred to is handed to me by the witness and hereto attached to this deposition, and that I have written my name on it.

J. R. CLEAVELAND, *Clerk.*

No. 33.] CENTRAL CITY, COL., *Nov.* 3, 1868.

Rocky Mountain Nation. Bank. Pay to George Muller, or bearer, twenty-seven hundred seventy-nine 50 dollars. $2,779.50.

UNION G. M. CO.,
GEO. K. SABIN, *Agt.*

(Across the face:) Paid Nov.

Int. one hundred and fifty-fifth. Look at the check handed you; state in whose handwriting it is.

(Defendant objects.)

Answer. In my handwriting.

Int. one hundred and fifty-sixth. State for what purpose the check was given.

(Defendant objects.)

Answer. To pay labor at mine.

Int. one hundred and fifty-seventh. Was the payee named in

201 the check previous to the time of making the check in the employ of the defendant?

(Defendant objects.)

Answer. He was.

Int. one hundred and fifty-eighth. Hand the check to the clerk, M'r Cle'veland, to attach to the deposition.

Defendant objects. 1st. That there has been no authority shown in Sabin to sign checks in the name of the defendant. 2nd. Nor any authority shown from defendant to plaintiff to pay checks drawn in its name by the witness, Sabin.

No. 100.] CENTRAL CITY, COL., *June* 1, 1868.

Rocky Mountain National Bank. Pay to Thomas Thomson, or bearer, one hundred ninety-eight dollars, $198.

UNION G. M. CO.,
GEO. K. SABIN, *Agt.*

The check above referred to is handed to me by the witness and hereto attached to the deposition, and that I have written my name on it.

J. R. CLEAVELAND.

Int. one hundred and fifty-ninth. Look at the check handed
202 you and state in whose handwriting the check is made.

(Defendant objects.)

Answer. In my handwriting.

Int. one hundred and sixty. State for what purpose it was made.

(Defendant objects.)

Answer. On account of hauling ore.

Int. one hundred and sixty-first. At the time of the making of the check was the defendant indebted to the payee therein named; and if so, for what?

(Defendant objects.)

Answer. It was indebted for hauling ore.

Int. one hundred and sixty-second. Hand the check to the clerk, M'r Cleaveland, to attach to the deposition.

(Defendant objects. Same reasons as to check last above offered.)

No. 14.] CENTRAL CITY, COL., *Dec.* 5, 1868.

Rocky Mountain National Bank. Pay to John Rank, or bearer, four hundred eighteen 25 dollars.

$418.25.

UNION G. M. CO.,
GEO. K. SABIN, *Agt.*

(Across the face:) Paid.

203 The check above referred to is handed to me by the witness, and hereto attached to the deposition, and that I have written my name on it.

J. R. CLEAVELAND, *Clerk.*

Int. one hundred and sixty-third. While doing business with the plaintiff on account of the defendant during the year 1867 & 1868, did you have or keep any pass-books or bank-books for the entry of checks as they were returned by the bank?

Answer. I did.

Int. one hundred and sixty-fourth. How many such books did you have?

Answer. Two.

Int. one hundred and sixty-fifth. Since the first of January, 1869, have those books been in the possession of the plaintiff at any time?

Answer. I have only seen them in the hands of the plaintiff or its attorneys. Since that date until now they are in my possession.

Int. one hundred and sixty-sixth. When did they last come into
204 your possession?

Answer. To-day.

Int. one hundred and sixty-seventh. From whom did you obtain them?

Answer. From Henry M. Teller.

Int. one hundred and sixty-eighth. Will you produce those pass-books, or bank-books, and make them a part of your deposition?

Answer. I decline to do it. I want them for my own reference.

Int. one hundred and sixty-ninth. What was the total amount of the dealings between the plaintiff and defendant during the years 1867 and 1868?

Answer. Something over one hundred thousand dollars; have not had access to the books to ascertain the exact amount.

Cross int. first. In answer to 10th and 11th direct interrogatories you state that you were employed by the defendant as superintendant,
205 in 1865; state how or by whom you were appointed superintendant at the time.

Answer. I was informed by a letter from honorable Edwin Croswell, president, that I had been appointed by a vote of the board of directors, and directed me to take charge of their property and work the same under their directions.

(Plaintiff objects to the answer because it states the contents of a letter and the letter was not produced.)

Cross-int. second. Is that letter in your possession?

Answer. It is not.

Cross-int. third. State if you know what became of the letter, and in whose possession it is now.

Answer. I can only state that I *have* gave it to Henry M. Teller, attorney of the plaintiff, and have not seen it since.

Cross-int. fourth. What property of the defendant did you work
206 from April or May, 1865, until the fall of that year?

Answer. I worked numbers one and two west from discovery claim on the Bates lode.

Cross-int. fifth. Why did you stop work during the winter of 1865 & 1866?

Answer. I stopped work by the directions of M'r Croswell, the president of the defendant.

Cross-int. sixth. How were you supplied with funds by the defendant during the time you were at work on the property of the defendant in 1865?

(Plaintiff objects, because it is immaterial.)

Answer. The first money furnished me was a certificate of deposit sent me by the treasurer, after which I drew drafts on treasurer and sent him the gold in return.

207 Cross-int. seventh. State what, if any, instructions you had from the defendant in the year 1865 in regard to the contracting of debts against the defendant.

(Plaintiff objects, because the instructions should be produced, and because the plaintiff is not bound by any instructions of the defendant by its agent.)

Answer. I do not remember any particular instructions; they directed me to send them the amount of the liabilities against the company when I took possession of their property, and to work the mine by contract and report progress from week to week.

Cross-int. eighth. When you went East in the spring of 1866 and received your salary, did you not resign your position of superintendent of defendant?

Answer. I have stated twice in the former trials of this case that I did not. Since that time I have seen a copy of defendant's books
208 in which my resignation was tendered by M'r Croswell, its presi-

dent; have now sent for certified copy of the same; until that comes am not prepared to state or answer.

(Plaintiff objects to the answer. He cannot state the contents from a copy of defendant' books, and is not responsive to the question.)

Cross-int. ninth. Did you not, on or about the first of April, 1866, deliver to the officers of the defendant, in their office in New York, a written resignation, or instrument in writing to that effect?

(Plaintiff objects. We object to it as disclosing the contents of a written instrument, and the written instrument is not produced.)

Answer. I delivered them a report; I did not consider it a resignation; do not remember all its contents.

269 Cross-int. tenth. Have you that report or instrument in writing in your possession?

Answer. I have not.

Cross-int. eleventh. Have you a copy of that report made by you at that time?

Answer. I have the original, or, in other words, the first one written from which the report referred to above was written.

Cross-int. twelfth. Will you produce it for the purpose of making it a part of your deposition in this case?

(Exception sustained.

Plaintiff objects, because it calls for a private paper and was never in the possession of plaintiff, and plaintiff never had any notice of it or its contents. It is not the paper produced to the defendant's officers in New York. It does not appear that the paper is of the same import as the one called a report & made to the defendant in New York. It is not the best evidence. Exception sustained.)

210 Answer. I will not produce the original, but I will produce a copy.

Cross-int. twelfth & ½. Is the paper produced by you a true copy of a report or communication made by you to defendant at its office in the city of New York about the first of April, 1866?

(Plaintiff objects to this question. It is immaterial whether it is a true copy or not; if it is sought to introduce any paper, it must introduce the original. Exception sustained.)

Answer. It is.

(Exception sustained.)

Cross-int. twelve & ¾ths. Will you hand it to the clerk to make it a part of your deposition in this case?

(Exception sustained.)

Answer. I will.

(Exception sustained.)

The paper was here handed to me to be made a part of this deposition.

(The plaintiff objects to the attaching of the copy to the depo-
211 sition, as it is not competent evidence; that the original was in existence, and no foundation was laid for the introduction of a copy that the original is in possession of the defendant is not produced.)

NEW YORK CITY,
April 3, 1866.

HON. EDWIN CROSWELL,
President Union G. M. Co.:

DEAR SIR: The only lodes belonging to your property on which there are any developments are the Bates, Bates' Extention, Hunter, Mam-

moth, Nova Scotia, Dickenson, Clary County, and Starberger; all of the above are more or less developed and stand A No. 1.

Your Bates property is much more developed than the others, and although the ores from this lode do not yield as much by the stamp mill process as some others, yet they show as rich by assay as any ores in Colorado on the average.

In my opinion if the shafts on your property were securely timbered, and your engine, boilers, and stamp-mill placed immediately over
212 the mine, on claim No. 2, and a good Cornish pump so placed as to keep the mine dry, the ores could be made to more then pay expenses at once. With the stamp-mill you have the tailings could be securely kept on your mill-site for the most successful of the many new processes now building and in a forward state of completion.

It has already been demonstrated beyond a doubt that most of the Colorado gold and silver-bearing ores are peculiarly well adapted for the smelting process of extraction. Mess'rs James E. Lyon & Co. have been wonderfully successful in extracting large quantities of gold and silver by their process, which process I have examined, but as I could not see their books I cannot say positively as to the cost.

M'r Lyon is now in New York, and I refer you to him for particulars. I feel satisfied, from the many processes now being introduced in Colo-
rado, that the day is not far distant when all the gold and silver
213 bearing ores can and will be worked profitably. On account of the scaly condition of the walls of your Bates mine', it will not be safe to work them without first timbering them securely.

Estimate cost of timbering	6,000
" " grading mill site on claim No. 2, and building foundations and cisterns	5,000
Removing Fisher mill-building to site when preferred	1,500
Placing engine and boilers and stamp-mill all in running order	2,000
Total	14,500

Then put in a Cornish pump and your claims can be made to pay more then expenses at once.

Your company's taxes have all been paid, and I know of no liabilities of your company in Colorado, save the account last rendered by me.

I arranged your company's matters before leaving Colorado, so that one hundred dollars per month will pay all expenses for taking care of the property until *or* you appoint a new superintendent.

Hoping this report will meet with your approval, I remain, your obe-dient servant,

GEO. K. SABIN.

214 Cross int. thirteenth. In answer to 12th direct interrogatory, you say, "I continued in the employ of the defendant in 1866." Were you ever employed by the defendant more than once?

Answer. I have never received any notice of my appointment as superintendent but once, and that was in April, 1865.

Cross-int. fourteenth. Were you in the employ of the defendant and receiving a salary from April, 1866, until the fall of that year?

Answer. Did not receive any salary during that time; do not know that I can claim to be in their employ, from the fact no compensation was rendered or claimed.

Cross-int. fifteenth. On whose business were you engaged during that time from April, 1866, to the fall of that year?

Answer. My own.

215 Cross-int. sixteenth. Were you re-appointed agent or superintendent of the defendant in the fall of 1866?

Answer. Was not to my knowledge.

Cross-int. seventeenth. In answer to 12th direct interrogatory, you say, "I commenced work late in 1866." By whose instructions or by what authority did you commence work at that time?

Answer. I had permission or authority to commence work at any time I thought proper; the permission was from M'r Potts, treasurer of the company.

Cross-int. eighteenth. Was it permission or authority?

Answer. I used both words, because I was not certain which.

Cross-int. nineteenth. Did you have either permission or authority from any other officer of the defendant?

Answer. I did not at the time I was last in New York.

216 Cross-int. twentieth. On what conditions, if any, did M'r Potts, the treasurer, give you permission to start work on the mine?

Answer. During the summer of 1866 I was in New York frequently, and always called at the office of defendant when there and talked with M'r Potts about their property. I was of the opinion their property could be worked and made to pay a profit, and always so represented to him in these conversations.

I agreed to commence working the property without any aid from the company except for the expense of starting, and told M'r Potts I might need a little money for temporary use in starting up the mine. M'r Potts said he would furnish such aid if I desired it. It was agreed the money so furnished should be furnished as a loan, and should be refunded after the mine was open.

It was agreed and understood between us that if I found the mine would not pay upon a fair trial I should shut it down and not run

217 the mine in debt. At our last interview M'r Potts said, with our general understanding you can start working any time you see fit, and if you can demonstrate by actual working what you now think, you can bring some of your own property here and I will sell it for you, taking stock in the company myself. I can sell a property for a reasonable sum at almost any time among my friends. The principal object of my visit east being to lay the foundation for accomplishing something for myself, and seeing no better opportunity, I concluded to take hold of this property and make a success of it if possible. Returned to Colorado and commenced working the mine. Wrote M'r Potts I had commenced working, and should probably draw on him for ten or fifteen hundred dollars. He replied he would honor my draft. I found friends here that consented to furnish me money for temporary use; so I wrote M'r Potts I should not draw on him at all, and did not.

(Plaintiff objects to the answer.)

218 Cross-int. twenty-first. Who was president of the defendant at the time you speak of in your last answer?

Answer. Samuel Bonell, jr.

Cross-int. twenty-second. Did you have any of the conversation alluded to in your answer in 20th cross-interrogatory in the presence of M'r Bonell or any other officer of the defendant?

Answer. M'r Bonell was present at one of our conversations; do not remember that any other officer of defendant was present.

Cross-int. twenty-third. Was M'r Bonell or any other officer of the defendant present at the final conversation and arrangement between yourself and M'r Potts, testified to by you in your answer to 20th cross-interrogatory?

219 Answer. M'r Bonell was not present; no other officer was present, to my knowledge. Several other men were writing at different desks in the room; if any of them were officers, I did not recognize them as such.

Cross-int. twenty-fourth. Did M'r Bonnell or any other officer of the defendant, to your knowledge, know at that time of the arrangement made by you with M'r Potts?

Answer. No, not of my own knowledge.

Cross-int. twenty-fifth. Did you at any time between the conversation with M'r Potts in the fall of 1866 and the first of January, 1869, communicate to any officer of the defendant the arrangememt made by you with M'r Potts?

(Plaintiff objects.)

Answer. I did not.

220 Cross-int. twenty-sixth. In your answer to 20th cross-interrogatory you say you told M'r Potts you might need a little money for temporary use in starting up the mine, and M'r Potts said he would furnish such aid if I desired it; was he to furnish the aid individually or on behalf of the defendant?

(Plaintiff objects, because it calls for the witness's own inference of the conversation instead of the conversation itself.)

A. I do not know, for he did not state. I only know he stated that he would render such aid if I needed it.

Cross-int. twenty-seventh. In your answer to 20th cross-interrogatory you say it was agreed the money so furnished by M'r Potts should be furnished as a loan, and should be refunded after the mine was opened. To whom was the money to be loaned, and by whom?

221 (Plaintiff objects, because the question *ansicers* that money was loaned by Potts, when the evidence shows that none was loaned by him.)

Answer. My understanding was the money was to be furnished by Potts to me.

Cross-int. twenty-eighth. In your answer to 20th cross-interrogatory you state that you wrote two letters to M'r Potts. Have you copies of the two letters to which you allude?

Answer. I do not know; have not looked over my list of letters to see.

Cross-int. twenty-ninth. You also state to 20th cross-interrogatory that you received a letter from M'r Potts saying that he would honor your draft. Have you that letter in your possession? And, if not, state if you know where it is.

222 Answer. I have not got it; looked for it on a former trial; do not know where it is.

Cross-int. thirtieth. Have you, since the letters you speak of in answer to 20th cross-interrogatory, had any communication with M'r Potts whatever?

Answer. I received one letter from him since the date of these two letters in question; it was just after the election of M'r Becker president, in April, 1867, notifying me of his, Becker's, election; none since that date.

Cross-int. thirty-first. Have you written M'r Potts any letters since the two spoken of by you in answer to 20th cross-interrogatory?

Answer. I think not.

Cross-int. thirty-second. You say in your answer to 20th cross-interrogatory that you found friends here that consented to furnish
223 you money for temporary use. Who were those friends, and what amounts of money did they respectfully furnish, and when ?

(Plaintiff objects; irrelevant & immaterial.)

Answer. M'r Hense furnished me one thousand dollars; Geo. T. Clark and Company furnished some, but don't remember the amount.

Cross-int. thirty-third. For what purpose did you use the money borrowed by you of Hense and Geo. T. Clark and Company ?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I applied it to the general expense of starting up work on the mine.

Cross-int. thirty-fourth. In whose name and on whose credit did you borrow the money of Hense and Geo. T. Clark and Company ?

(Plaintiff objects; immaterial & irrelevant.)

224 Answer. I borrowed it in my own name and on my own credit.

Cross-int. thirty-fifth. In answer to 21st, 22d, & 23d direct interrogatories, you say that defendant was engaged in mining on the Bates lode from 1866 until December, 1868. What property did defendant own on Bates lode at that time ?

Answer. Numbers one & two west.

Cross-int. thirty-sixth. What other property, if any, did you work on the Bates between the fall of 1866 and December, 1868 ?

(Plaintiff objects, because immaterial and irrelevant.)

Answer. I worked number three west.

Cross-int. thirty-seventh. Did you do any work on the discovery claim during the same time ?

225 (Plaintiff objects, because immaterial & irrelevant.)

Answer. Started on number one west to draw a level through to discovery claim. It was my intention to extend said level through the west half of discovery claim, which I had purchased. Do not remember to what extent this level was completed.

Cross-int. thirty-eighth. State whether that level entered the west half of discovery claim.

(Plaintiff objects, because immaterial and irrelevant.)

Answer. My impression is this level extends through west half and connects with Cowen level claim, east half of discovery.

Cross-int. thirty-ninth. What is the distance through the west half of the discovery ?

(Plaintiff objects, same as above.)

226 Answer. Fifty feet.

Cross-int. fortieth. When was this work done on west half of discovery ?

(Plaintiff objects, same reason.)

Answer. All the work I did in that portion of the mine I done in 1868.

Cross-int. forty-first. What part of the year 1868 ?

Answer.

Cross-int. forty-second. What extent, if any, did you mine and work or stop the west half discovery in the year 1868 aside from the level spoken of ?

(Plaintiff objects, because immaterial and irrelevant.)

Answer. I don't know.

227 Cross-int. forty-third. Who owned west half of discovery when the work spoken of by you was done ?

(Plaintiff objects, because immaterial and irrelevant, &c.)

Answer. I never did any work on the west half of discovery, except during the time I owned it myself.

Cross-int. forty-fourth. At what time was the mining done by you on claim number three west on the Bates lode?

Answer. Commenced in January, 1868, and continued nearly through that year.

Cross-int. forty-fifth. To what extent did you work claim number three west during the year 1868?

(Plaintiff objects, because it is immaterial and irrelevant.)

Answer. I drove a level about ninety feet and stoped from sixty to eighty feet high.

228 Cross-int. forty-sixth. How deep was the working on west half of discovery and claim number three west on Bates lode?

(Plaintiff objects; immaterial and irrelevant.)

Answer. My recollection is that level on three west is two hundred and eighty feet from surface; that the work on discovery is from three hundred to three hundred and twenty-five feet deep. I think about three hundred.

Cross-int. forty seventh. Who owned claim number three west when you were working it in 1868?

(Plaintiff objects; immaterial & irrelevant.)

Answer. Theodore H. Becker.

Cross-int. forty-eighth. To what extent was the property of defendant on the Bates lode worked during the year 1868 by you?

229 (Plaintiff objects; immaterial & irrelevant.)

Answer. I estimate the average stoping about forty feet; the shaft was sunk from sixty to eighty feet.

Cross-int. forty ninth. How was the work on the west half of discovery-claim and claim number three west prosecuted during the year 1868?

(Plaintiff objects; immaterial & irrelevant.)

Answer. The work was prosecuted from the hoisting-shaft of defendant. Ore raised through the same shaft with the same engine; all work done on the west half of discovery & No. three west was done through the hoisting-shaft of defendant.

Cross-int. fiftieth. How did the work done on the west half of discovery and number three west, in the year 1868, compare as to the quantity with the work done on property of defendant during the same time?

230 (Plaintiff objects; immaterial & irrelevant.)

Answer. The work done on number three west would cost just about one half as much as work done on the property of defendant, but cannot make estimate on work done on west half of discovery.

Cross-int. fifty-one. How did amount of ore taken out of west half of discovery and claim number three west, during the year 1868, compare in quantity with the ore taken out of the property of defendant during the same time?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I think the ore from No. three west, in quantity, would be about one-half as much as ore taken from the property of defendant during the same time.

Cross-int. fifty-second. By whose authority and whose account did you work the west half of discovery on the Bates lode?

231 (Plaintiff objects; immaterial & irrelevant.)

Answer. All the work done by me on the west half of the discovery was done on my own responsibility.

Cross-int. fifty-third. By whose authority and under what arrangement, and with whom made, did you work claim number three west, on the Bates lode?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I worked number three by the authority and with the consent of Theodore H. Becker, under an arrangement made with him.

Cross-int. fifty-fourth. When was that arrangement made, and what was it?

(Plaintiff objects; immaterial & irrelevant.)

Answer. It was made with him just before he left for the East in January, 1868, and was about the same made with Potts, in New York, in the fall of 1866.

232 Cross-int. fifty-fifth. Did Becker at the time of making the arrangement with you, above spoken of, and during the time you were working number three west, to your knowledge, know of the arrangements you had made with Potts, and how you were working the property of defendant?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I always supposed that he knew; do not think that I ever told him.

Cross-int. fifty-sixth. Did he, to your knowledge, know from any source?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I cannot say that he did from my own positive knowledge.

Cross-int. fifty-seventh. While you were the superintendent of defendant, in 1865, were you furnished with a stamp-mill? And if so, by whom?

233 (Plaintiff objects; immaterial & irrelevant.)

Answer. The defendant, in New York, rented the Bates and Baxter mill, located near the mine, and directed me to run the same. I did so until they directed me to stop all works, in the fall of the same year.

Cross-int. fifty-eighth. During the time you were working the property of defendant, from fall of 1866 to winter of 1868, were you furnished with a stamp-mill by the defendant?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I was not.

Cross-int. fifty-ninth. In the former part of this deposition you speak of running a mill & employing hands to run the same during the years 1867 & 1868. To what mill do you allude?

Answer. I allude to the Douglass mill, located at Chase Gulch, owned by Becker.

234 Cross-int. sixtieth. State by whose authority and on whose account, and under what arrangement, and with whom made, you used and run the mill by you above spoken of, when the arrangement was made, and what it was?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I made the arrangements for mill with Becker. The arrangement was that he was to put the mill in good running condition. I was to have the use of the mill without rent, except the developement of number three west on Bates, and to leave the mill in as good condition as when I took it. This arrangement was made in the summer of 1867. I had no special authority from any source save of that above described.

I conducted all business in the name of the Union Gold-Mining Company.

Cross-int. sixty-first. Did you have any authority from any
235 source whatever to rent the mill? Did you not do it entirely on your own responsibility?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I did not have any authority to rent mill. I rented the mill on my own responsibility.

Cross-int. sixty-second. State whether you kept seperate accounts of the mining expenses on west half of discovery-claim, on No. three west of discovery, and the property of the defendant on the Bates lode, and a seperate account of expenses of running the mill of Beeker, or whether the expenses of carrying on all these different works were charged in the same account.

(Plaintiff objects; immaterial & irrelevant.)

Answer. I did not keep separate accounts. The expenses of running the mill and running expenses from the different places designated were all kept in one general account.

236 Cross-int. sixty-third. To what account were all these different expenses charged?

(Plaintiff objects; immaterial & irrelevant.)

Answer. All charged to account of defendant.

Cross-int. sixty-fourth. From fall of 1866 to March, 1867, when you commenced doing business with the pl't'ff, where, and in whose name, did you keep a bank account, if you kept one?

(Plaintiff objects; immaterial and irrelevant.)

Answer. My impression is that I did keep a bank account with George F. Clark & Co.; sold them the gold from the mine, and applied the same to the expenses that accrued in starting the works; don't remember in whose name I kept the account.

237 Cross-int. sixty fifth. Did you keep any bank account in the name of the defendant anywhere in and after the fall of 1866 until you commenced business with plaintiff?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I don't remember whether the account with Geo. T. Clark & Co. was in my own name or in the name of defendant, nor can only tell by referring to the books of the account with Clark & Co. was kept in my own name there. The account was first opened in the name of defendant with the plaintiff.

Cross-int. sixty-sixth. At the time you commenced business with plaintiff, in March, 1867, or at any time while you were doing business with it, did you represent to the plaintiff that you had authority to draw checks and contract debts by borrowing money in the name of the defendant; and did plaintiff at any time while you were doing business with it call for any written authority from the defendant to
238 you or ask you in regard to your authority to draw checks in the name of the defendant and contract debts by borrowing money in its name?

(Plaintiff objects; immaterial & irrelevant.)

Answer. At the time I commenced doing business with the plaintiff, in March, 1867, I opened the account by a deposit in the name of defendant, and checked against its same accounts in the name of defendant. I continued the business in the same manner. My authority was never questioned; I never represented I had any authority from defendant to draw checks or borrow money in name of defendant; neither was my authority questioned in any manner by plaintiff.

Plaintiff never asked if I had either written or verbal authority to borrow money, or even to do business of any kind in the name of the defendant until about the time the two notes were given. (I have reference to the notes that were cancelled by the court in the last trial
239 of this cause.) Said notes were given about the first of October, 1868. When Cashier Goodspeed asked me to settle the account by drawing drafts on defendant, I told him I had no authority to draw drafts, neither had I authority to contract debts in its name, and we must depend upon the mine for the money, and I have full confidence in my ability to pay it from the mine; that I had a quantity of ore already broke in the mine. He then wanted me to give notes; that he was going east and wanted to close the account on the books before he left. I told him I had no authority to bind the defendant by signing notes, and that I thought I would be individually responsible for them if I signed them, but I would consult an attorney and let him know what I would do. After I consulted an attorney I signed the notes. We then continued business in the same manner as before until December, 1868.

(Plaintiff objects to answer, that it is not responsive to the
240 question, is not proper cross examination, is immaterial & irrelevant. The testimony about notes is especially objected to, because it is not cross-examination, as the plaintiff has not asked about these notes.)

Cross-int. sixty-seventh. Did you at any time, from the fall of 1866 until in December, 1868, inform any officer of defendant that you were doing any business in Colorado whatever in its name?

(*Defendant* objects; immaterial and irrelevant.)

Answer. I don't think I did. I think in my correspondence with Becker I always said I or we.

Cross int. sixty-eighth. From the fall of 1866 until in December, 1868, did any officer of defendant, to your knowledge, know that you were doing any business in its name?

(Plaintiff objects; immaterial & irrelevant.)

241 Answer. I cannot say of my own knowledge that any officer knew in whose name I conducted the business.

Cross-int. sixty ninth. During the latter part of the year 1867 and the year 1868 did plaintiff, or any officer of plaintiff, know that you were engaged in working the west half of the discovery claim and claim No. three west on the Bates lode, and running Becker's mill, and that that property did not belong to the defendant, and that money by you obtained from it was being applied to the working of such property and running such mill?

(Plaintiff objects; it is immaterial and irrelevant, and is not proper cross-examination, and is not sufficiently definite.)

Answer. I do not know that the plaintiff or any of the officers knew that I worked any property on the Bates lode; same that of defendant. The cashier, Goodspeed, knew I was running Becker's mill; he
242 also knew that a portion of the money obtained from them was applied to the running expenses of the mill.

Cross-int. seventieth. In the answer to 40th direct interrogatory you say there was a sign on the building on Lawrence street. Did that sign remain there all the time from April, 1865, to spring of 1867?

Answer. I don't know.

Cross-int. seventy-first. When you came back in the fall of 1866, was not the sign down, and did you not get it from Conrad Elliot and place it on the building after your return?

Answer. Do not remember.

Cross-int. seventy-second. At the time you received the letter from Becker testified by you in the latter part of 1867 and the year 1868, did he, to your knowledge, know you were doing business in the name of defendant, and did he know you were working west half of
243 discovery *was working* & claim number three west, and running his mill under the arrangement made by you with him?

(Plaintiff objects; immaterial and irrelevant.)

Answer. Don't know positively that he knew in whose name I conducted the business. He knew I was working number three west from the time I commenced working the same. He also knew I was running the mill, and must have known I was working the same under the arrangement made with him. I don't know that he knew whether I did or did not work west half of discovery at all.

Cross-int. seventy-third. Did you not immediately, or soon after buying the west half of discovery, in*from* Becker by letter that you were running a level in it?

(Plff objects, because the letter is the best evidence.)

Answer. I presume I did; it was my intention so to do.

244 Cross seventy-fourth. Did you pay the workmen by you employed at the mines and at the mill at the office on Lawrence street, or did you receive the time from the foreman and give to the foreman of mill and mine, respect*fully*, at the mine and mill, a check for amount due each set of men?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I did not pay workmen employed at the mine and mill at the office on Lawrence street. The time of the men employed at the mill I always received at mill from the foreman, wrote the check at my office on Lawrence street, and gave the same to foreman at mill, taking his receipt for the same. The time of the men employed at the mine I received from the foreman, sometimes in the office on Lawrence street and sometimes at the mine. I wrote the check in my office, and sometimes gave it to the foreman in the office and sometimes at the mine, taking his receipt therefor.

245 Cross-int. seventy-fifth. How often did you pay workmen employed by you at the mine and mill?

Answer. Once a month, with one or two exceptions.

Cross int. seventy-sixth. Usually how many checks did you draw each month to pay men at mill and mine, and how many receipts did you take each month for payment of same?

Answer. At the mill usually drew one check, payable to the order of the foreman, (the amount of said check included the wages of all men employed at the mill,) and took the foreman's receipt for the same. At the mine my recollection is I drew two checks, one payable to the order of the foreman, which wages included the wages of all men employed at the mine except one, taking his receipt for the same. The one exception alluded to above I paid direct with check, tak*en* his receipt.

Cross-int. seventy-seventh. When Becker was at the office occu-
246 pied by you in the years 1867 & 1868, did he, to your knowledge, ever see a check drawn by or receipt taken by you, or know, to your knowledge, in whose name the checks were drawn or receipts taken?

Answer. I am quite sure Becker has been in the office when I wrote checks and took receipts for the same. Becker wrote at his own desk and I at mine. Don't know of my own knowledge whether he saw the checks or receipts until after the trouble with the bank.

Cross-int. seventy eighth. Where were the books in which you kept

your accounts kept during the time that Becker was at your office in 1867 & 1868?

Answer. At the banking house of plaintiff.

Cross-int. seventy-ninth. In answer to the 64th direct interrogatory, you say the workmen were employed by the Union Gold-Mining Company.

Did the defendant, between the fall of 1866 and January 1st, 1869,
247 employ any workmen to carry on work on the west half of discovery claim and claim number three west on the Bates lode and the mill of Becker's?

(Plaintiff objects; immaterial and irrelevant.)

Answer. I employed all the men at the mine on all the different claims worked, also at the mill, in the name of the Union Gold-Mining Company, and paid them in its name.

Cross-int. eightieth. Did the defendant, between the fall of 1866 and January, 1869, employ any laborers except through you as assuming to be its agent?

(Plaintiff objects as to the assuming.)

Answer. Not to my knowledge.

Cross-int. eighty-first. In answer to 67 direct interrogatory you say the amount of first-class ore piled up at the mine was four hundred tons on the first of January, 1869. What amount of first-class ore was
248 piled up at the mine on the first of April, 1868?

(Plaintiff objects; immaterial and irrelevant.)

Answer. The ore piled up in the large building erected especially for that purpose on the first of April, 1868, contained about the same amount as it did in January first, 1869; the ore that was saved after April 1st, 1868, was piled up outside of the main building and a shed built over it.

Cross-int. eighty-second. At what amount did you estimate the ore piled up in the large building in April 1st, 1868?

Answer. Three hundred and fifty tons.

Cross-int. eighty-third. What proportion of that three hundred and fifty tons came from property of defendant; what from claim No. three west, and what from west half of discovery?

(Plaintiff objects; immaterial and irrelevant.)

249 Answer. In my opinion, ninety one-hundredths ($\frac{90}{100}$) came from property of defendants; ten one-hundredths ($\frac{10}{100}$) from No. three west, and none from west half of discovery.

Cross-int. eighty-fourth. Of the fifty tons piled up outside after April 1st, 1868, & sheded over, what proportion came from property of defendant & what from No. three west?

Answer. All from number three west.

Cross-int. eighty-fifth. In your answer to the 70th direct interrogatory you say that when you quit work in December, 1868, there were seventy-five cords of ore broken in the mine. What proportion was in the mine of defendant and what in three west?

(Plaintiff objects; immaterial & irrelevant.)

Answer. In my opinion it would be seventy-five hundredths in
250 mine of defendant, and twenty-five hundredths in number three west.

Cross-int. eighty-sixth. In answer to 77th direct interrogatory you say you drew checks on plaintiff and signed them Union Gold-Mining Company, Geo. K. Sabin, agent. By what authority did you sign the name of defendant, and from what source was that authority derived?

(Plaintiff objects: 1st. That the witness cannot now be heard to dis-

pute the authority he performed by his signature. 2nd. Because it is a question of law and not of fact whether he had authority to sign a check.)

Answer. I never had any direct authority from any source upon the point in question.

Cross-int. eighty-seventh. Who took charge of the mine of defendant after the 16th of December, 1868?

Answer. Theodore H. Becker.

251 Cross-int. eighty-eighth. State whether you were employed by T. H. Becker after December 16th, 1868; and, if so, how long.

Answer. I was, and, my recollection is, remained until the 19th of March, when final settlement took place in bank of plaintiff.

Cross-int. eighty-ninth. State whether your engine remained on the mine of defendant from December 16th until work closed, and whether it was used by Becker.

Answer. My engine remained on the mine until work closed, and was used by Becker.

Cross-int. ninetieth. In answer to 31st direct interrogatory, you say in March, 1869, you received $400.00 from Mr Becker. Is that amount any more than was due you from Becker for services and use of engine after he took control of defendant's mine at that time?

252 Answer. It was not.

Cross-int. ninety-first. In answer to 91st direct interrogatory you say the debt was created with plaintiff by your drawing checks on the plaintiff in the name of the defendant, when it, the defendant, had no money there, and plaintiff paying checks. State by what authority you assumed to contract debts by borrowing money in defendant's name.

Answer. I had no authority from any source.

(Plaintiff objects, because it is a question of law whether he has authority or not.)

Cross-int. ninety-second. In answer to 92nd direct interrogatory you say the checks were drawn by you on plaintiff and debt contracted for carrying on the general business of mining and milling of defend-

253 ant. Was not the debt also contracted and the money used to carry on mining on west half of discovery-claim and on claim number three west, and to run the mill of Becker, and to pay yourself a salary and for the rental of your engine?

(Plaintiff objects: immaterial & irrelevant.)

Answer. It was.

Cross-int. ninety-third. In answer to 98th direct interrogatory you say that there was an indebtedness created by you by overdraft with plaintiff on 1st of October, 1868, and that you do not know the amount. State, if you know, what the amount was on the third day of October, 1868.

Answer. On the third day of October the overdraft was a little over ten thousand dollars.

Cross-int. ninety-fourth. From and after that date did that indebtedness remain and stand as overdraft?

254 (Plaintiff objects, because immaterial and irrelevant, and not the best evidence, and should be proved by the books.)

Answer. Ten thousand dollars of it did not remain and stand as overdraft.

(Exception sustained.)

Cross-int. ninety-fifth. How, if any way, was that ten thousand dollars arranged?

(Plaintiff objects: immaterial and irrelevant, and does not appear it was arranged at all. Exception sustained.)

Answer. By my giving two notes of five thousand dollars each.
(Exception sustained.)
Cross-int. ninety-sixth. Have you those notes in your possession?
(Exception sustained.)
Answer. I have not.
(Exception sustained.)

Cross-int. ninety-seventh. Do you know in whose possession
255 those notes are?

Answer. I do not. They were handed to the court just before the trial commenced at the last term of this cause by M'r Teller, attorney for plaintiff, with the request that the court cancel them. The court did cancel the notes. The last time I saw them they were handed to the clerk with instructions that they be put on file.
(Exception sustained.)
Cross-int. ninety-eighth. State what date those notes bore, to whom and when they were made payable, and how and by whom signed.
(Plaintiff objects, because immaterial and irrelevant, and not a proper cross-examination. Exception sustained.)
Answer. The notes bore date the 3d day of October, 1868, payable on demand to plaintiff, signed Union G. M. Co., Geo. K. Sabin, agent. I wrote the signature.
(Exception sustained.)

256 Cross-int. ninety-ninth. State under what circumstances they were made and delivered, and to whom delivered.
(Plaintiff objects; immaterial and irrelevant. Exception sustained.)
Answer. I gave notes at the request of M'r Goodspeed. He was going east and did not want to leave it on books as an overdraft. At first I refused to sign them, stating I had no authority to sign them, and I thought it would not bind the company if I did sign them; that I would be individually liable for them. Goodspeed urged the matter. I consulted an attorney, and afterwards signed and delivered them to M'r Goodspeed.
Cross int. one hundredth. State whether the attorney whom you consulted was the attorney of the plaintiff.
(Plaintiff objects; immaterial and irrelevant, and not a proper cross-examination. Exception sustained.)

257 Answer. I don't know that he was at that time.
(Exception sustained.)
Cross-int. one hundred and first. What officer or officers of defendant were present in Gilpin County at the date those notes were made?
(Plaintiff objects; immaterial and irrelevant. Exception sustained.)
Answer. Theodore H. Becker, president of defendant, was present.
(Exception sustained.)
Cross int. one hundred and second. State whether you consulted Becker, the president, in regard to giving the notes to plaintiff.
(Plaintiff objects; immaterial and irrelevant. Notes are not sued on or in controversy. Exception sustained.)
Answer. I did not.
(Exception sustained.)
Cross-int. one hundred and third. State whether you informed Becker of the indebtedness or of the fact of your having given the notes at that time.
(Exception sustained.)

258 Answer. I did not inform Becker of the indebtedness at that time, nor did I ever inform him of the existance of the notes previous to the last trial of this cause.
(Exception sustained.)

Cross-int. one hundred and fourth. State if any agreement was made by you with any officer of the plaintiff by which the having given the notes and their existence was to be kept from the knowledge of defendant; and, if so, with whom the agreement was made, and what it was, and for what purpose it was made.

(Plaintiff objects, because immaterial & irrelevant and not a proper cross-examination; calls for the opinion of the witness as to the object of the agreement. Exception sustained.)

Answer. There was an agreement made to keep the existence of the note from the knowledge of Becker, president of defendant. The agreement was made with M'r Goodspeed. The arrangement to keep
259 the existence of the notes from Becker was at my request. I still doubted my authority to sign them and bind the defendant by signing them. I expected to soon pay them from the proceeds of the mine and never let Becker know of their existence.

Cross int. one hundred and fifth. Did you at the time of making this agreement communicate to Goodspeed the reasons by you above given?

(Plaintiff objects; immaterial & irrelevant. Exception sustained.)

Answer. I did, and further agreed the first monies I had should be applied to cancel the notes.

Cross-int. one hundred and sixth. In answer to 99th and 100th direct interrogatories, you state that the debt that was increased by overdraft made by you in the name of defendant between the first of October, 1868, and middle of December, 1868, to the amount of over twenty-three thousand dollars during that time, did you inform Becker that you was creating indebtedness with plaintiff, and did plaintiff, to
260 your knowledge, so inform him?

Answer. I do not think I informed Becker during that time that I was creating a debt; have no knowledge of officer of plaintiff informing Becker during that time.

Cross-int. one hundred and seventh. Was there any arrangement or agreement or understanding between yourself and any officer of plaintiff by which the existence of the debt in the name of defendant, or amount of the indebtedness to be kept from the knowledge of the defendant or Becker?

Answer. There was no understanding in relation to it, save the existence of the notes alluded to.

Cross-int. one hundred and eighth. In answer to 102d direct interrogatory, you say, "I told M'r Becker on his return, about the first of October, we were overdrawn at the bank." Who did you tell M'r
261 Becker was overdrawn at the bank? State what language you used.

Answer. I told him that we were overdrawn at the bank. I have no doubt I said we, as I almost invariably use that term.

Cross-int. one hundred and ninth. Did Becker, to your knowledge, until the 16th day of December, 1868, ever know that any business was being done by you with the plaintiff in the name of the Union Gold-Mining Company?

(Plaintiff objects; immaterial and irrelevant.)

Answer. Of my own positive knowledge I cannot say that he did.

Cross-int. one hundred and tenth. About the first of October, 1868, on Becker's return, what amount did you inform him that you were overdrawn with plaintiff?

Answer. About five thousand dollars.

Cross-int. one hundred and eleventh. How did you ascertain
262 that amount, and for what purpose?

Answer. I stepped into the bank the day I was expecting Becker to arrive, and asked Goodspeed how our account stood; he turned to their bank-book and told me we were overdrawn 'bout five thousand dollars.

Cross-int. one hundred and twelfth. Did Goodspeed know the purpose for which you asked the statement of account?

Answer. I told Goodspeed I was expecting Becker up that night, and wanted to inform him how we stood.

Cross int. one hundred and thirteenth. Was the amount given you and by you reported to Becker the true amount of your overdraft at that date, or was your overdraft greater; and, if greater, what was the amount?

263 (Plaintiff objects; immaterial and irrelevant, and not a proper way to prove it.)

Answer. It was not, and the amount was greater on the 26th of September, twelve thousand and sixty-one & $\frac{85}{100}$ dollars; on the fifth of October it was thirteen thousand five hundred and seventy-six dollars, (as shown from the pass-book.)

Cross-int. one hundred and fourteenth. On or after the third day of October, (when you gave notes for $10,000 and left the balance unsettled,) did you inform Becker of the mistake made or misunderstanding in regard to the amount of overdraft on the first?

(Plaintiff objects; immaterial and irrelevant.)

Answer I did not.

Cross-int. one hundred and fifteenth. Did you at any time after October first and before the 16th of December, 1868, ever report to Becker any indebtedness with plaintiff except the statement in regard to the five thousand dollars?

264 Answer. I did not.

Cross-int. one hundred and sixteenth. Did you at any time prior to October first, 1868, report to Becker, or to any officer of defendant, that you were creating a debt by overdraft with plaintiff, and in the name of defendant?

(Plaintiff objects; immaterial and irrelevant.)

Answer. I did not.

Cross-int. one hundred and seventeenth. In answer to 125th direct interrogatory you say, "I gave the amount for entries on the books from the vouchers;" to whom do you swear you gave the amounts for entries on the books?

Answer. To the person employed at the time to keep the books.

Cross-int. one hundred and eighteenth. Who kept your books from the fall of 1866 until spring, 1867, and at what time did he commence?

265 Answer. Frank Messinger commenced in January, 1867, and continued three months.

Cross-int. one hundred and nineteenth. Were all your transactions in regard to the mine entered in those books from the time of commencement up to April, 1867?

(Plaintiff objects, because immaterial and irrelevant.)

Answer. They were not.

Cross-int. one hundred and twentieth. Was there any entry of money obtained from Hense, or money obtained from Clark & Co. for the purpose of starting the mine made in the books, or any entry of the payment of these amounts or either of these?

(Plaintiff objects; immaterial and irrelevant.)

Answer. No entries on books for money obtained from Hense & George T. Clark & Co.; no entries of the payment of the same.

266 One hundred and twenty-first. Was the money paid that you borrowed from Hense; and, if so, in what manner was it paid?

Answer. It was paid; don't remember whether by currency or by check.

One hundred and twenty-second. If it was paid by check on what bank was the check drawn, and in whose name was the check signed?

Answer. I don't remember on what bank check was drawn, if payment was made by check; if check was given, was signed by me individually.

Cross-int. one hundred and twenty-third. In answer to 127th direct interrogatory, you say you do not think any officer or member of the defendant examined your books after Goodspeed kept them; did any officer or member of defendant examine those books at any time between the fall of 1866 and January, 1869?

267 Answer. I did not see Becker or any other officer of defendant examine the books; they did not to my knowledge.

Cross-int. one hundred and twenty-fourth. In answer to 127th direct interrogatory you say, "I think my vouchers were examined by Becker some time between the first of November, 1868, and March, 1869." At what time between those dates was that examination made?

Answer. I do not remember positively.

Cross-int. one hundred and twenty-fifth. Was it previous to the 16th of December, 1868?

Answer. It was after that date.

Cross-int. one hundred and twenty-sixth. Do you know from any officer of plaintiff that the defendant in New York repudiated and denied the debt with plaintiff in January, 1869? If so, state from

268 what officer of plaintiff, and what he said in regard to it.

(Plaintiff objects, because it is not proper cross-examination; cannot be proved in this way.)

(Exception sustained.)

Answer. In January or February, 1869, Mr. Goodspeed came to me and stated Mr. Becker had received a letter from the defendant in New York stating that they utterly repudiated and would have nothing to do with the debt; also that Becker said he would have to spread the matter before the meeting of the stockholders and state the matter of their claims to them. Goodspeed wanted me to use all my influence with Becker to go on and have the matter attended to; that it placed him in a very bad position. I told Goodspeed I would do all I could to influence Becker to have the debt settled, but at that time I thought I had but little if any influence with him.

(Exception sustained.)

Cross int. one hundred and twenty-seventh. Have you at any

269 time had any conversation with president of plaintiff in regard to who was liable for this debt? If so, state when it was and what president of plaintiff said on that occasion.

(Plaintiff objects as not cross examination.)

(Exception sustained.)

Answer. Some time before the first trial of this cause, the president of plaintiff was here and wanted to know from me the whole history of the case. I gave him a history of the case fully, when he said, "Sabine, you are individually liable for the debt, and that if they failed to collect the debt from the Union Gold-Mining Company they should collect it of me." He then cited a case of Colonel Tonnatt, where they had sued the agent

direct and got judgment. This conversation occur'ed in the back room of the bank of plaintiff in Central City.

(Exception sustained.)

Cross-int. one hundred and twenty-eighth. Did you not swear on the last trial of this cause at Golden City that you had a bank account with Clark & Co. from fall of 1866 to spring of 1867 in your own name,
270 and that you borrowed money in your own name to start the mine of defendant, and was that statement correct?

(Plaintiff objects; immaterial & irrelevant.)

Answer. I did so state; I still think it was correct.

Cross-int. one hundred and twenty-ninth. Did you not at the last trial of this cause swear that you had made arrangements with Goodspeed for overdrafts in 1868, and paying it as soon as you could; that you was the only person plaintiff knew, and that it looked to you for the overdrafts; and, if so, was that statement correct?

Answer. I testified I made arrangement for overdraft in spring, 1868, and to pay the same as soon as I could. I testified, supposed that I was the only person they knew, and that he held me, and it was correct.

Cross-int. one hundred and thirtieth. Who, if any one, were present in the back room of bank at the conversation between yourself and president of plaintiff testified to by you?

271 Answer. Herman Kountze, president of the bank, Charles Kountze, and myself.

Cross-int. one hundred and thirty-first. Did you not, prior to commencing work in the fall of 1866, inform E. A. Smith, John Miller, Thomas Thompson, John H. Hense, George T. Clark, and Conrad Elliott, and each and all of them, or either of them, that you had got to start up and work the mill on your own account?

(Plaintiff objects; immaterial & irrelevant. Exception sustained.)

Answer. John Miller was my first mining foreman. My recollection is, I told him, in substance, that if I started up the mine I must run it on its own merits, and without the aid of the treasurer. I asked Miller if he would take hold of the mine with me and depend upon taking the money out of the mine for his pay. We first examined the mine, and then he said he would. He went to work with me with that
272 understanding, and worked until his wages amounted to about $1,050.00 before he drew any money. The conversation and arrangement with Thompson was substantially the same as with Miller. E. A. Smith lived next door to me, and we were often together and talking over mining matters, both being engaged in mining. I doubt not I told him that I was running the mine on my own hook, or language to that effect, for I never denied the arrangement made with Potts and myself in New York. George T. Clark's statement in last trial, have no doubt it is correct. I knew I borrowed money of him, and conversed with him in New York and here. Mr. Elliott, I don't know what I did say to him. Mr. Hense, I told something about the mine; in substance, I told him I was going to make it pay, if possible, its own expenses. I was satisfied I could make it pay after getting under way. He loaned me one thousand dollars.

(Exception sustained.)

Cross-int. one hundred and thirty-second. Did you, prior to
273 March, 1867, inform any one, or claim that you were to start up and work the mine on account of defendant; and if so, who did you inform?

(Plaintiff objects; immaterial & irrelevant. Exception sustained.)

Answer. I don't remember that I told any one.

Cross-int. one hundred and thirty-third. Did you not, at the last trial of this cause, testify that you did not know that Becker was ever present when men were paid at the office, and that Becker was never present, to your knowledge, when you drew checks; and if so, was it not correct?

Answer. I did so testify, and it was correct.

Redirect examination:

First interrogatory. Was the letter you say you received from Croswell the first information you had that you were appointed superintendent?

273¼ (Defendant objects; immaterial and irrelevant. Further, that it does not show from whom the information was received.)

Answer. The letter alluded to is the first information of my appointment.

Second redirect interrogatory. Had you any communication with defendant, or any of its officers, about your appointment as superintendent of defendant before you received Croswell's letter? If so, state who and what was the character of the communication.

(Defendant objects, because it is irrelevant, immaterial, and not the best evidence.)

Answer. Received a dispatch by telegraph from Becker or Potts, asking if I would accept the office of superintendent.

Third redirect interrogatory. Did you have more than one

273½ letter from Croswell, while he was president, concerning the business of defendant; if so, how many?

(Defendant objects; same as above.)

Answer. I did; several of them.

Fourth redirect interrogatory. Did you ever hand more than one letter of Crosswell's to Henry M. Teller?

(Defendant objects; immaterial and irrelevant, and is not in regard to anything drawn out on cross-examination.)

Answer. I don't remember.

Fifth redirect interrogatory. You said in answer to 7th cross-interrogatory that you were directed by the defendant to send the amount of the defendant's liabilities at the time you were appointed superintendent to the defendant. State the amount of such liabilities, and who contracted the same.

274 (Defendant objects; irrelevant and immaterial, and not in regard to new matter drawn out on cross-examination, and not the best evidence.)

Answer. The liabilities were contracted by Col. Mallery, former agent. The amount I do not recollect.

Sixth redirect interrogatory. Do you know for what these liabilities were incurred? If so, state.

(Defendant objects; same as above.)

Answer. I know a portion of the liabilities were for mining.

Seventh redirect interrogatory. You say, in reply to the 8 cross-interrogatory, that you have stated twice on former trials if this cause that you did not resign your position as superintendent while East in the spring of 1866. Do you mean that you have stated so on oath that you did not so resign?

275 (Defendant objects. Whether he did so swear or not it is a matter of record, and this is not the best evidence; and further, that that part of the answer is not responsive to the question, and that

he was not asked by the defendant anything he had swore to on a former trial.)

Answer. My understanding at the former trial and since that time, until I rec'd a copy of the company books, was that I did not resign. I now state that until I see a certified copy of the books of defendant I cannot give a positive answer.

Eighth redirect interrogatory. You say, in reply to the 8th cross-interrogatory, that you have stated twice on former trials of this cause that you did not resign your position as superintendent while in the East, in the spring of 1866. Was such statements made while you were being examined in the cause as a witness, or at some other time?

276 (Defendant objects; same objections as last redirect interrogatory.)

Answer. I think they were made on the stand, while I was a witness.

Ninth redirect interrogatory. In answer to the 8th cross-interrogatory, you say that since you had stated on the former trial that you did not resign your position as superintendent you had seen a copy of defendant's books, in which your resignation was tendered by Crosswell. State in whose handwriting such copy was and who showed it to you.

(Defendant objects. Immaterial & irrelevant.)

Answer. It was in the handwriting of Becker and was handed to me by him.

Tenth redirect interrogatory. In answer to the 27th cross-interrogatory, you say that Potts was to furnish the money to you to start

277 the mine. Did you not understand it was to be furnished from the money of defendant, and to be repaid out of the mine?

(Defendant objects—special objection—because it calls for the opinion of witness and not the fact.)

Answer. My impression was that he would furnish the money from the treasury. I was to repay the money after opening mine out of the proceeds of the mine.

(Defendant objects, because witness gives impressions and not facts; 2nd, because it is not responsive to the interrogatory, as the interrogatory calls for an understanding.)

Eleventh redirect interrogatory. For what purpose was the money borrowed of Hense and Geo. T. Clark & Co.?

(Defendant objects, because the witness has already stated.)

278 Answer. I applied the money in paying expenses incurred in starting up the mine.

Twelfth redirect interrogatory. From what source was the money borrowed from Hense and Geo. T. Clark & Co. paid?

Answer. From the proceeds of the mine.

Thirteenth redirect interrogatory. In whose name was the Douglass mill run from the time you commenced in 1867 until it closed down, and in whose names was the account kept?

(Defendant objects; immaterial & irrelevant.)

Answer. I have repeatedly stated that all the works carried on at the mine, also the mill, was carried on in the name of defendant, and expenses of working the same was paid from one general fund, the proceeds of the mine.

279 Fourteenth redirect interrogatory. At what time did you close the mill, and for what purpose?

(Defendant objects; first, immaterial, and 2nd, not a proper re-examination.)

Answer. The mill was closed for repairs in October or November, I think, without reference to books, a portion of each month.

Fifteenth redirect interrogatory. How long did the mill run between the first of October, 1868, and 16 of December, 1868?

(Def't objects; immaterial.)

Answer. I don't remember.

Sixteenth redirect interrogatory. How long was the mill shut down while it was being repaired in the fall of 1868?

(Defendant objects; immaterial and irrelevant, and not proper re-examination.)

280 Answer. I think from four to six weeks.

Seventeenth redirect interrogatory. Was the mill run after December, 1868; if so, how long?

(Defendant objects; same as last above.)

Answer. It was run some; I don't remember when it was shut down.

Eighteenth redirect interrogatory. Did you pay any of the men employed about the mill while it was being repaired; if so, how were they paid?

(Defendant objects; same as last above.)

Answer. I did pay all of the men; were paid with checks on the bank of plaintiff.

Nineteenth redirect interrogatory. On what ore was this mill run?

(Defendant objects; immaterial and not proper redirect examination.)

281 Answer. On ore from the Bates lode.

Twentieth redirect interrogatory. What was done with the gold taken from the mill during the years 1867 & 1868 and before December 16, 1868?

(Defendant objects; same as last above.)

Answer. Sold to the plaintiff.

Twenty-first cross-interrogatory. What was done with the proceeds of such gold?

(Defendant objects; same as last above.)

Answer. Used in payment of mining and milling expenses.

Twenty-second cross-interrogatory. Who was to have the proceeds of the ore taken from No. three west on the Bates lode, under your arrangement with Becker for running the mill and de'loping said claim?

(Defendant objects; immaterial and not proper re-examination.)

282 Answer. Becker was to have the smelting ore.

Twenty-third redirect interrogatory. How long after you made the arrangement with Becker about the use of mill and the working of No. three west on the Bates lode, before you began to work on said claim?

(Defendant objects; immaterial and not proper re-examination.)

Answer. My recollection is that I commenced working the claim in January, 1868, and the mill in August, 1867.

Twenty-fourth redirect interrogatory. Did you state on a former trial you commenced running the level west on No. three west before Becker went east in 1867?

(Defendant objects; immaterial and not a proper re-examination.)

283 Answer. I don't remember what I stated, or that I stated anything with reference to it.

Twenty-fifth redirect interrogatory. Was any of the ore taken from claim No. three west milled with the ore taken from No. one & two west on the Bates lode?

(Defendant objects; same as last above.)

Answer. It was.

Twenty-sixth redirect interrogatory. At whose suggestion did you buy the west half of discovery on the Bates lode, if anybody's?

(Defendant objects; immaterial and was a proper re-examination.)

Answer. I bought it on my own suggestion, because I heard Becker say he would give a certain sum for it, and afterwards sold it to Becker in 1869.

Twenty-seventh redirect interrogatory. Who owns it now?

284 (Defendant objects; immaterial and irrelevant, and not a proper re-examination.)

Answer. I don't know, but think Becker owns it.

Twenty-eighth redirect interrogatory. To whom and when did you sell it?

(Defendant objects; same as last above.)

Answer. I think in February, 1869.

Twenty-ninth redirect interrogatory. You say, on cross-examination, of your own knowledge you can't say that Becker knew you were working property of defendant under the arrangement with Potts. During the time you were so working the property of defendant did he not address letters to you as superintendent of Union Gold-Mining Company, or letters addressed to you with the name of the company defendant or its initials on the envelope of such letters?

285 (Defendant objects; 1st, irrelevant and immaterial; 2d, not a proper re-examination; 3d, it has already been examined of *an* direct examination, and not on the cross; 4th, letters and envelopes are the best evidence.)

Answer. He addressed one as superintendent of Union G. M. Co., (and I think some of the envelopes had the initials of the company on them.)

(Exception sustained in parenthesis.)

Thirtieth redirect interrogatory. In answer to the sixty-sixth cross-interrogatory you stated that at the time of the making of the notes mentioned by you, you told Goodspeed you had no authority to contract debts in the name of defendant. Did you not, on the 1st and 2nd trials of this cause, swear that you did not remember that you told him you had no authority to contract debts in the company's name?

(Defendant objects; immaterial and not proper re-examination.)

Answer. I told Goodspeed that I had no authority to draw

286 drafts. I see by the former testimony that I told Clark I had no authority to contract debts in name of defendant; it was probably Clark instead of Goodspeed.

(Defendant objects, because not responsive. Exceptions sustained to the answer.)

Thirty-first redirect interrogatory. Are you confident that you told Goodspeed, at the time of the making of the notes, that you had no authority to contract debts in the name of defendant?

(Defendant objects; call for impression instead of recollections.)

Answer. I think I told him so about that time.

Thirty-second redirect interrogatory. Didn't you testify on the last trial of this cause as follows: I told Goodspeed that I could not draw on the company. I don't remember that I told him that I had no

287 authority to contract debts in the company's name.

(Defendant objects; 1st, it is immaterial; 2nd, it is the same question asked and answered three times; 3d, not a proper re-examination; 4th, on cross-examining his own witness on a matter drawn out by himself.)

Answer. I have but little doubt the testimony as taken before was taken as given. I still think I told Goodspeed I had no authority to contract debts; that my understanding was to shut down the mine when it wouldn't pay its own expenses; that I had full confidence in the mine paying; that I had quite a quantity of ore already broken in the mine, and that when crushed would yield a good amount of gold.

Thirty-third redirect interrogatory. When you consulted the attorney about your personal liability in giving the notes, did you tell him to whom the notes were to be given, and on what account?

288 Answer. I don't think I did.

Thirty-fourth redirect interrogatory. How many men did you work at the mill after October 1st, 1868, and until December 16th, 1868?

(Defendant objects.)

Answer. I don't remember the exact number; but for one week ten or twelve; the balance of the time not as many.

Thirty-fifth redirect interrogatory. Where did you keep your receipt and check books?

(Defendant objects; immaterial and not proper re-examination.)

Answer. In the office on Lawrence street.

Thirty-sixth redirect interrogatory. Did your books kept by Messinger and Goodspeed show the proceeds of gold taken out of the property worked by defendant, and all money paid out on account of defendant?

289 (Defendant objects.)

Answer. They did.

Thirty-seventh redirect interrogatory. Did your books so kept by Messinger and Goodspeed show the expenditures of the money used in opening the mine?

(Defendant objects; immaterial and not a proper re-examination.)

Answer. I think they do.

Thirty-eighth redirect interrogatory. In answer to 126th cross-interrogatory you say that Goodspeed told you that Becker had received a letter, and that the defendant repudiated this debt. Did you swear to this on the former trials?

Answer. I don't think I did; I was not asked anything in relation to it.

Thirty-ninth redirect interrogatory. In your conversation with the president of the bank, was not his statement to you that in case

290 the defendant was not liable to the plaintiff you were liable to the bank or plaintiff?

(Defendant objects.)

Answer. No; after giving him the history of the case he stated you are liable to the bank, and if we fail to collect from the company shall collect from you.

Fortieth redirect interrogatory. After December 16, 1868, in what capacity were you employed about the mine and mill?

(Defendant objects.)

Answer. I took general charge about the same as before, except rendered accounts and gave gold to Becker.

Forty-first redirect interrogatory. When was the mine shut down?

Answer. I don't remember.

291 Recross-examination:

First. In your re-examination you state that it was your impression that Potts was to loan to you the money of the defendant; state what was said, and how you got that impression.

(Plaintiff objects. It is not a proper recross-examination.)

Answer. Potts said when I told him I should require some money to start up the mine with, that he would let me have it; there was nothing said at that time to give me the impression, but I have understood in some former conversations. I understood that they had some money in the treasury, and, from the fact that he was treasurer, I *inforced* he would furnish from that fund.

The conversation testified to by me in this deposition with Hermon Kountze, president, of plaintiff. Charles Kountze was out and in
292 during the conversation. Do not know whether he heard any part of it or not. I so testified in deposition, but it was not put in. (Explanation tend. in parenthesis.)

I also wish to say, in explanation, should any part of this deposition differ from the testimony given by me in former trials, I had no access to my vouchers, letters, or books, and testified from memory. Now, while giving this deposition, I had full and free access to all vouchers, pass-books, letters, &c., other books of the defendant as well as of the plaintiff, together with the original report made by me to defendant on the 3d day of April, 1866.

GEO. K. SABIN.

I, John R. Cleaveland, clerk of the district court of the 2nd judicial district of Colorado, within and for Gilpin County, Colorado Territory, of Central City, in compliance with said su'pœna, being duly ap-
293 pointed to take the deposition of George K. Sabin, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the examination of the said George K. Sabin as a witness in the suit between the said Rocky Mountain National Bank of Central City, plaintiff, and the said Union Gold-Mining Company of Colorado, defendant, he was duly sworn by me, as such commissioner or clerk of said court, to testify the truth in relation to the matters in controversy between the said Rocky Mountain National Bank of Cen r l City, plaintiff, and the said Union Gold-Mining Company of Colorado, defendant, so far as he should be interrogated concerning the same.

That the said deposition was taken at my office in the city of Central, county of Gilpin, and Territory of Colorado, commencing on the 31st day of October, A. D. 1873, and continuing on the first, third, and fourth, and ending on the 15th day of November, A. D. 1873, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto as written down were read over to the said
294 witness, and that thereupon the same was signed and sworn to by the said deponent, George K. Sabin, before me, the oath being administered by me as such commissioner, or clerk of said court, at the place and on the day and year last aforesaid.

SEAL OF THE COURT, GILPIN COUNTY, COL. TER'RY.

JOHN R. CLEAVELAND,
Clerk 2nd Judicial District of Colorado Territory, as Commissioner.

(Endorsed:) 31,100. Rocky Mountain National Bank of Central City vs. Union Gold-Mining Company. [Gilpin County district court, Colorado.] Deposition of George K. Sabin. Opened 17 November. Filed same day, Nov. 17th, 1873. John R. Cleaveland, clerk. Henry Bell, deputy.

295 The plaintiff then called JOSEPH H. GOODSPEED, who was sworn as a witness, and testified as follows, to wit:

I am acquainted with the parties to this suit. Am acquainted with

the defendant as well as I could be in this country. I have known the plaintiff since the summer of 1866, and have known the defendant since 1867. I was in the employ of the plaintiff from November, 1866, until January, 1870. The defendant was running on Bates' lode. Defendant had an office on Lawrence street, in Central City; there was a sign on the left-hand side of the door as you go in. The sign had on it, "Office of Union Gold-Mining Company." George K. Sabin occupied the office. M'r Sabin was in charge of defendant's business in fall of 1866.

When I went there he was mining. Sabin did business with plaintiff; commenced in March, 1867. He came into the and deposited money. In 1867, after I came here, M'r Sabin came into the bank, and, as superintendent of the Union Gold-Mining Company, deposited four hundred and forty-three dollars, or 440 dollars anyway, and continued
296 doing so till December, 1868, depositing and drawing checks against it. M'r Sabin brought in currency the first time; he afterwards brought in gold and sold it. The proceeds of the gold were placed to the credit of the defendant.

M'r Sabin came to me one time in the spring, or along in the summer, of 1867, and told me that Frank Messinger, the man who had generally kept his books, had gone East, and asked me to write them up for him; he brought on his vouchers and read them off to me, and I entered them on the books as he read them. He said he was going East, or had been East. I wrote up his books after that till 1st October, 1868.

From time to time after that he brought in his vouchers or receipts; they were the receipts taken for money paid out by him. I entered them on the book as he read them off to me.

The plaintiff here asked the witness this question, "In whose name were those receipts?" to the witness answering which the defendant objected, because not the best evidence; the court overruled the objection, and the defendant then & there excepted. The witness then answered.

The receipts read, "Received of the Union Gold-Mining Com-
297 pany, at the hand of George K. Sabin, agent," so many dollars, signed by different parties. The receipts acknowledged that they received money from the Union Gold-Mining Company. This method of doing business continued from March, 1867, to December 16th, 1868. On December 16, 1868, the indebtedness, or amount due from defendant to plaintiff, was twenty-one thousand and odd dollars. The books are here somewhere.

(Witness was shown the copy of account attached to declaration in this case.)

I examined this account after it was made out. The balance is twenty-one thousand two hundred and seventeen dollars and six cents; that is, to the term of finally closing the account, January 1st, 1869.

(A check shown to witness.) This is a check made by Sabin—George K. Sabin.

(Several checks shown to witness.) These were all made by George K. Sabin. All the checks included in the account were made this way. I could tell how many checks he made by counting them. All these on the account were made by him, Sabin, in the same way, and he made others in the same way.

298 (The checks shown to witness were handed to the court to be marked.)

These checks were paid by the bank and charged to the account of the Union Gold-Mining Company, and entered up in Sabin's pass-book and returned to him. This pass-book was kept in name of Union Gold-

Mining Company. The total amount of the dealings between plaintiff and defendant during the time I have mentioned was, in round numbers, one hundred thousand dollars; about that.

Mr. Sabin looked over this account every time his pass-book was written up. On the first day of January, 1869, the last statement was made.

I knew Theodore H. Becker. I forget whether I met him in 1867 or not. He was here that summer. I met him when I got back from the East in January, 1869. He was here the summer before, and in the summer of 1867. I remember seeing him in the street. Don't know whether I was introduced to him or not. He was here either just before or just after I went East in 1868. He went away on morning of March 20th, 1869. I returned here during the first week in January,
299 1869; was in Chicago on New Year's day, and came right through, stopping one day in Omaha. I had a number of conversations with M'r Becker about this indebtedness, after I returned. I was acting in the capacity of cashier of the bank of plaintiff.

Here the plaintiff asked the witness this question: "Did you have any conversation after you returned in January, 1869, with Theodore H. Becker concerning this indebtedness, or with reference to this account? If so, state what it was." To the witness answering which the defendant objected, because there is no foundation laid to show that M'r Becker had any authority from the defendant to act in this matter on its behalf.

The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Witness then answered: "Yes; from the time I came back until the 20th March, 1869, M'r Becker was in the bank, sometimes in the daytime and sometimes in the evening, at least once a week, and often two or three times a week. At each of those times I had conversa-
300 tion with him in regard to the indebtedness of the company to the bank.

"He said that the accounts would be paid; that he would go East and call a meeting of the directors, and that assessments should be made. He would have assessments made and the claim paid. He also told me that before he left the country he would himself pay, or see paid, every debt the company owed, except this debt to the bank."

Here the defendant moved to strike out part of this answer, beginning at "He also told me," &c., to the end; but the court overruled the motion, and defendant excepted then and there to the ruling.

"I told M'r Becker there were a good many small debts around the country."

Plaintiff here asked witness to "state what you told him and what he replied;" to the witness answering which the defendant objected—objected to witness stating anything he told Becker; but the court overruled objection, and defendant then & there excepted to the ruling of the court.

301 The witness then answered as follows: "The time Becker was talking about making an assessment to pay the claim up, I told him that there were a good many small claims on the company due at the time Sabin shut down, and if he went East they would be suing them in justice' court, and that I thought he ought to see that everything was cleared up as well as he could before he left the country and went East. Then he gave me the answer that M'r Reed has down there."

Plaintiff here asked the witness, "Do you know of his paying any of those debts?"

The defendant objected to witness answering, because immaterial and

not connected with the subject-matter of this suit; but the court overruled the objection, and defendant then and there excepted to the ruling.

Witness then answered: "He got money from the bank to pay them on draft drawn on the East; that is, to pay these small debts. He obtained the money by his draft drawn on the treasurer of the
302 company. These drafts were drawn between the time of my return from East and the time M'r Becker went away; between some time in January and the 20th March, 1869. He drew a draft the night before he went away. M'r Becker had a settlement with Sabin on the evening of 19th March, 1869, in the office of the bank. Becker, Sabin, M'r J. H. Potter, & myself were present."

Plaintiff here asked the witness: "State what took place there at that time."

To witness answering, the defendant objected, because immaterial; what took place there between them is not connected with the issue. The court overruled the objection, and defendant then and there excepted.

Witness then answered: "Becker asked me to look at the company's books and see what was due M'r Sabin on them at the time he quit work. I looked and told him the amount, and he paid Sabin for that, and for the time he had worked from that time until 19' March. Becker
303 asked me what was the amount due Sabin on the books. (Books of defendant handed to witness.) These are the books. The amount I told him was one hundred and forty-five dollars and forty-one cents. This was the balance to December 16th, 1868. It was for salary as superintendent of the company and rent of his engine. The salary was figured at the rate of thirty-five hundred dollars a year. M'r Potter had made the last entries in company's books.

"The books were then in the bank. There was no entries made in the books after the 16th December, 1868. In addition to the $145.41, M'r Becker paid M'r Sabin for his services up to March 19th, 1869, in all three or four hundred dollars. I don't remember just how much. After Becker had paid Sabin he discharged him in presence of myself & Potter—discharged him as superintendent of the company.

"M'r Becker went away the next morning, and returned some time the following summer. M'r Becker came and examined these books in the back room of the bank—perhaps he never did so but once.
304 M'r Becker stated that he would call a meeting of the directors, and have the assessment made in February. Then afterwards he said the assessment would have to made by the stockholders. This last statement was made some time after the first, and after February, I think. When I asked him why he did not have the assessment made in February, he said that under the New York law it had to be made by the stockholders.

"On the 19th March, 1869, M'r Becker spoke about making the assessment; said he owned a majority of the stock in the company, and as soon as he could go East he would have the assessment made in April."

The defendant here objected to all statements made by M'r Becker; court overruled the objections, and defendant then and there excepted.

Witness here answered: "M'r Becker knew the amount of this indebtedness." Here the plaintiff asked the witness this question: "Did you know of M'r Sabin's making any accounts at other places with other parties during this time?"

305 The defendant objected to the witness answering, because, 1st.

That the dealings sought to be proved is of a different kind from that sought to be proved, and of a different kind from that in controversy. 2d. While an agent, if he was an agent for the purpose of mining, might have authority to contract debts for supplies, he could not have had authority for the purpose of drawing checks or giving notes. 3d. If Sabin was doing business with plaintiff and there was a wrong showing fraudulent conduct on Sabin's part in dealing with other parties in using defendant's name, would not justify it in this instance. It is not shown that witness knows what Becker did in regard to these other accounts, and is not the best evidence.

The court overruled the objection, and defendant then and there excepted to the ruling of the court.

The witness then answered: "Yes, I do; I know of steel from Tappan & Co. and powder."

Plaintiff then asked, "Were they charged to defendant?" to the witness answering which defendant objected on account of form, and,
306 2nd, not the best evidence; but the court overruled the objection, and defendant then and there excepted to the ruling.

Witness answered: "I want to explain that the only way I do know is by seeing bills made out by these parties. I don't know how I would know who is president of defendant in the year 1867 & 1868, but to the best of my knowledge M'r Becker was. He was introduced to me as president. M'r Sabin was about the bank doing business very often; I might say once a week during the whole time."

Plaintiff then asked: "Did M'r Sabin ever at any time notify you that he had no authority to make debt in the name of defendant?" to the witness answering which the defendant objected, because the agency is not shown to have existed, no statement of Sabin ever declaring he was an agent. It is attempting to get a negative statement from the witness when there is no affirmation, and an attempt to contradict their own witness. The court overruled the objections, and the de-
307 fendant then and there excepted to the ruling of the court.

The witness then answered: "No, sir; he never notified me of anything of the kind. I have stated the substance of these conversations with Becker about this time."

Plaintiff then asked: "In what conversation did you state to whom these small debts were due?" The defendant objected to witness answering, because leading and prompting; objections overruled, and defendant then and there excepted.

Witness answered, "I don't think I told him."

(Here books of defendant were handed to witness.)

"I can tell when I commenced to make entries here."

Plaintiff then asked: "When was it?" The defendant objected to the witness answering. The objection was overruled by the court, and defendant then and there excepted.

Witness answered: "I commenced making them for the month of April. That would be in the month of May that I commenced, 1867. The first accounts I entered were those for April. It seems from
308 this book that I commenced making entries for the month of April, and afterwards the month of May seems to have been written up by George Mabee. I know his handwriting, and Sabin told me. "The account I referred to when Becker asked me to look at Sabin's account is on page 40. It is the account Becker settled for. My writing in this account extends from June, 1867, to October 9th, 1868. There is one entry by Potter, December 16th. There is an account with J. O. Reynolds here. I had nothing to do with writing that up. There

is a cash account in the books. The expense account seems to have been kept under the name of 'the Bates lode.' On page 45 that account commenced, August 31st, 1865, and runs along to December 16th, 1868. There is nothing here after December 16th, 1868. The first entry I made was June 7, 1867, and the last October 8th, 1868."

The plaintiff here asked the witness to "state the method of keeping that account of the Bates lode."

The defendant objected because not the best evidence; objection overruled by the court, and the defendant then and there excepted.

309 Witness answered: "Everything paid out for the mine, for mining, milling ore, &c., the expenses of the mill & mine, hauling ore, &c., put on one side of the account, and the proceeds of the gold or sale of ore put on the other side, placed to the credit of the mine. The left-hand side is the debit side & the other the credit side."

Plaintiff here asked: "What was the account of J. M. Rank? What was the entry made on the 6th June under head of sundries, an item of quite an amount?"

The defendant objected to the witness answering, because irrelevant and immaterial and has nothing to do with the subject-matters of this suit; they claim overdrafts made by Sabin amounting to $21,000, due December, 1868. They claim, 1st, that Sabin was agent of defendant and authorized to carry on that business, and as agent he had the authority to contract this debt, or, that if he was not agent, the defendant has since that time ratified his acts, and all evidence that does

310 not tend to show one or other of these propositions is irrelevant and immaterial; and again the witness has said he knew nothing except from papers handed him. Plaintiff' attorney stated that he desired to show that all these entries, made like the one included as "sundries," were for labor on the mine. The court overruled the objections, and the defendant then and there excepted to the ruling.

Witness then answered: "Page 96 of the day-book is an itemized account of labor and bills paid during the month of June and part of May, labor and hauling quartz. These are the books that were left, and are the books of the Union Gold-Mining Company."

On cross-examination witness Goodspeed testified as follows:

First knew plaintiff at time of organization of bank. I know defendant was working the Bates mine, because I have been there while men were at work on the Bates lode, men employed by Sabin.

311 I can't give any other reason for knowing the defendant worked the Bates lode than the one I just gave—because Sabin was there and employed men. I don't know any other way a man could be superintendent up there in the mountains. Sabin told me he was superintendent. He brought an account to the bank and opened it in name of Union Gold-Mining Company. He never told me in so many words. I knew it from the fact that he signed his name as superintendent. I think he signed as agent. The words agent and superintendent are synonymous up there in the mountains. If a man signed his name as agent, I consider it the same as telling me so. I knew he put "ag't" after his name, and others told me he was agent.

I think I was introduced to M'r Sabin by M'r Welch, when I went to the mountains as agent of Union Gold-Mining Company, in November, 1866. M'r Sabin has told me either that he was agent or superintendent, hundreds of times. I don't know how he told me so, but

312 he has told me so. I can't remember when the first time was. He signed checks that way. I can't say whether he signed checks that way the same day he made the deposit or not. He opened an

account in name of Union Gold-Mining Company, made a deposit, and had it placed to the company's credit on its pass-book.

He had kept his account at Clark & Co's previous to that; don't know in whose name he kept it there; never took any pains to ascertain. I asked M'r Sabin what his powers was at the time he commenced the overdraft. He told me he had authority to draw drafts. He did not give me any drafts; gave me good reasons for not giving them.

When I commenced doing business with him I did not make any inquiries as to whether he was doing business on his own account or for the defendant. I think I never made such inquiries. I never communicated with any of the officers of the defendant to ascertain what authority, if any, he had.

I was cashier of bank. I mean that Sabin was mining in defendant's mine. When I say he had charge of its business, he was doing
313 business in the name of defendant. Sabin commenced doing business with me when I first came to the country.

Between November 1st, 1866, and the time he commenced doing business with me, I did not know of his doing any business in the name of defendant, except from hearsay; that was all. I had no personal knowledge of it. I heard say on the street that Sabin was agent of the company.

I don't remember exactly the time Sabin brought his accounts to me to keep; the first entry is in April, and it must have been in May he brought the books; they may have been a month or two behind when he brought them to me. George Maber and Sabin made entries in the books after I commenced writing them up. There are no charges in the books in favor or against the defendant. The name of defendant does not appear there any more than the bank's name in the books of the bank. Mallony opened the accounts "the Bates Lode;" it is what I would opened "Expense accounts." It has on one side all the expenses of the business, and on the other all the credits.

314 The first I knew about Mr. Sabin mining other property than that of defendant was along in the latter part of the summer of 1868. I don't remember the date.

Defendant here asked the question, "What property did you know of his mining then?" Plaintiff objected to witness answering. The court sustained the objection, and the defendant then and there excepted to the ruling of the court.

The account as it stood on the books against the defendant about January 1st, 1868, was $21,217.06; it had been more than that in December, but they brought in some gold; that was the balance. This was created by overdraft. I never had notice from anybody, nor from Sabin himself, that he had authority to sign checks in the name of defendant, except if a man put money in a bank I think he has a right to draw it out.

I never asked Sabin in regard to his authority to sign checks. I never made any inquiries of any officer of the corporation defendant in regard to the authority or right of Sabin to draw checks in its name.

315 These checks were paid and charged to account of defendant and returned to Sabin up to the time I went away, and afterwards as far as my knowledge went.

Sabin kept a pass-book; it shows all of the transactions between him and the bank in name of defendant. Becker was in bank frequently, and I conversed frequently with him about indebtedness after I returned from the East. I can't tell the date now when I first conversed with

him. It was the time he was going to lay the matter before the directors, in February. After he failed to fulfil his promise to do this he promised to lay it before the stockholders. He first promised to call a meeting of directors & have an assessment made. I don't know of my own knowledge whether it was laid before the directors & an assessment made or not. I think his words were that he would lay the matter before the directors and have the assessment made at the time he told me he would call a directors' meeting. Afterwards he explained to me that the directors could not make an assessment; that had to be done by the stockholders.

316 M'r Becker did not promise me to see the debt paid only in the way I have stated. He distinctly told me that the only way the assessment could be made was by a vote of the stockholders. I think he said he would bring the matter before the stockholders; have a vote passed on it; that he owned a majority of the stock and would vote the assessment. Afterwards he said it required a two-thirds vote instead of a majority, and that he could not vote it on his own stock.

M'r Becker informed me by letter, after the meeting in April, that the balance of the stockholders refused to vote the assessment. I don't know what time in April it was. M'r Becker said before he went East that he would see all the other debts of the company paid. I was speaking to him about the little debts outside that they might get a judgment on and sell the property.

317 I have testified in this case before, twice. I don't know that I gave the reason for wanting these small debts paid before. Becker said, in effect, that all the debts Sabin had contracted in running the mine—the debts contracted the same as ours—should be paid before he went east, and ours should be paid by an assessment.

Tappan & Roworth' accounts were not for borrowed money. I don't see any difference between getting money & getting powder. All these debts stood on the same footing. I don't know that I told Becker my reason for wanting these small debts paid; don't know that I gave any reason. I may have. I don't know the exact amount Becker paid Sabin when he settled with him. I know the one item he asked me to tell him; that was $140 and some cents; that was balance of salary at 3,500$ per year, and rent of engine from the time Sabin commenced on the lode up to that time. I think the last payment before that was for the month of September. Made the entry on the first of October before I went East.

318 M'r Sabin kept a running account; he did not settle every month for his salary & engine. I don't know how much M'r Becker allowed Sabin after the 16th December and until 19th March, except from what M'r Sabin told me or in his testimony.

I had nothing to do with their settlement; that was M'r Becker' and M'r Sabin's private affairs.

I think I testified on a former trial that Becker paid Sabin in the neighborhood of four hundred dollars. I don't know that I saw the money counted out, but M'r Sabin said something of that kind. The rent of the engine was one hundred dollars per month. These books remained in the possession of the bank till last term of court, from December, 1868, till November, 1872, about 4 years. The books were in the bank during this time There were no credits there after the balance of one hundred and forty-five dollars to M'r Sabin; no entries after the 16th day of December, 1868.

319 I only made entries from the receipts M'r Sabin turned in. There is no entry in these books to show that that amount was

ever paid M'r Sabin. I don't know what you would call proceeding to pay the debt. I stated to you just what Becker said to me. Becker told me he could do nothing until the directors' meeting; that is what he always said, directors' or stockholders' meeting. I can't swear whether he said directors' or stockholders' meeting at the first conversation I had with him in January, 1869.

On redirect examination witness Goodspeed testified as follows:

Plaintiff asked witness the question, "In reply to a question of M'r Reed, you stated that you knew in 1868 that M'r Sabin was working other property. State what property you referred to."

Defendant objected to this question because it was stopped by the court from inquiries in regard to it; but the court overruled the
320 objection, and the defendant then and there excepted to the ruling of the court. Witness then answered:

"I think it was a lode up in Nevada or Russell somewhere; I think a lode called the Continental lode; think M'r Sabin owned it in the summer of 1868, and sold part of it to a party in Chicago and worked some on it afterwards."

Here the plaintiff offered in evidence the books of the defendant. Defendant objected because, 1st. It is not shown that they are books of the defendant and kept by an officer of defendant. 2nd. No authority shown on the part of Sabin to do business or keep books in the name of defendant. 3d. Not having that authority shown, no items in the books could be competent evidence in the case. And the court overruled the objections, and defendant then and there excepted to the ruling of the court.

Plaintiff then called THOMAS H. POTTER, who was sworn as a witness and testified as follows:

321 "I know the parties to this suit; have known the plaintiff since the early part of 1867. I have been in the employ of plaintiff since July or August, 1867, as book-keeper and other business connected with the office."

The plaintiff here asked the witness this question: "Do you know what business the defendant was engaged in in the summer of 1867?" to the witness answering which the defendant objected, because there has been no foundation laid nor shown that defendant was doing anything. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Witness then answered: "They were engaged in mining on the Bates lode, running the ore through a stamp-mill and selling it, carrying on the business generally of mining & milling."

Plaintiff here asked the witness this question: "Who was the agent or superintendent of defendant in the summer of 1867, when you first knew it, in charge of its work, if you know?" to the witness answering which the defendant objected, because not the proper mode of
322 proving agency. The court overruled the objection, and the defendant then and there excepted to the ruling of the court.

The witness then answered: "George K. Sabin was agent; carried on or superintended the business during 1867 & 1868. Defendant was mining on what is called the Bates lode, between Central City and Black Hawk, in Gilpin County."

Plaintiff here asked this question: "What was Sabin doing at that time that you speak of?" The defendant objected to the witness answer-

ing for the reasons last above given. Objections overruled by the court and defendant then and there excepted to the ruling.

Witness answered: "He was superintending the works of the company. I know what the duties of a mining superintendent are generally, and there are a good many duties that I do not know about. To have general charge of all the workman at the mine and general supervision of the business connected with mining outside of his
323 milling, and buying supplies. The superintendent usually takes charge of the gold when it is delivered to him by the mill-men; sometimes he takes charge of it in amalgum, has it retorted himself. The superintendent disposes of it; sells it or ships it East."

Plaintiff here asked this question: "Did the defendant do any business with the plaintiff after your acquaintance with the parties? If so, state the nature of the business, how it was transacted." To the witness answering this question the defendant objected, because it has not been shown that the defendant was doing any business in Colorado at all. The court overruled the objections, and the defendant then and there excepted to the ruling.

Witness answered: "They did business with the plaintiff; sold all the gold produced, I think, and on selling the gold it was put to the credit of the defendant and checked out by George K. Sabin, the agent and superintendent, for the payment of his men at the mine and at the mill, and for the purpose of paying bills for the purchases made from
324 different parties in Central City and other places, mining supplies, such as iron, steel, handles, candles, picks, drills, and things of that class, powder-fuse, and other things I can't think of now. The business at the bank was transacted in name of defendant.

"Sabin continued to do business at the bank in that way from the I went there in July or August, 1867, until December, 1868. The account was opened before I went there. This account was closed on the pass-book on 31st December, 1868.

"M'r Sabin brought in a pass-book which had been written up to the 16th December, 1868, I think, and asked me to write it up, which I did, with all the checks or vouchers. A balance was struck; it showed the defendant owing plaintiff $21,217.06; that was made up of what we call overdraft. The debit amounted to so much more than the credits. It was all overdraft so far as the bank was concerned. There is
325 one item of interest of four hundred and fifty-nine dollars and fifty-five cents. This was figured at two per cent. a month, I think, from 1st October; I am not positive about the time. This was included in the balance. I spoke to M'r Becker about the interest. He said, 'All right; charge it up.'

"I called upon M'r Becker on December 16th, 1868, at M'r Elliott's house, in Chase Gulch, in the evening, in company with M'r Sabin. After the ordinary salutations we proceeded to talk business. I asked M'r Becker if he was ready to pay up the indebtedness due the bank. I have forgotten just his reply to that; it was not favorable, and I urged on him the necessity of paying the debt as we had waited some time; it had not been settled, as we were led to believe it would be by Sabin; we were uneasy, and did not think it was in good shape. I asked him to pay it or give some kind of security. I urged it pretty strongly, & M'r Becker got a little ag'ravated and said, 'Your damn' bank think' you have
326 divine right.' After a few minutes M'r Becker got in a better humor, and we talked the thing over in a friendly kind of a way and he said we need not be at all alarmed; that it was all right and he would see that it was fixed up.

"We may have had other conversations. I think that is the substance of what was said about the business. I think I told him the amount at that time."

Plaintiff here asked this question: "Did you ever have any subsequent conversation with M'r Becker concerning this indebtedness; if so, when, and what was it?"

The defendant objected to any and all statements made by M'r Becker without showing his authority from the defendant. There has been no authority shown M'r Becker to make statements binding the defendant. The court overruled the objections, and defendant then and there excepted to the ruling of the court.

Witness then answered: "I think several times after that I met M'r Becker and asked him when he was going to settle up the
327 claim. He would always put it off in a kind of joking way, and say he would fix it up after a while. Once or twice he said he was going East to have a meeting of the directors of the company, and that he would lay the matter before them and would have an assessment made to pay off the debt.

"Had these conversations every few days for a month. I was present at a conversation between C. B. Kountze and M'r Becker about 1st January, 1869. I know of a letter written about that time by M'r Becker to president of plaintiff. I was present at the time."

(Here plaintiff offered in evidence a copy of a letter.)

"This is a true copy of the letter I refer to. I made this copy from the original; this was written on 1st January, 1869. I did not have anything to say at that time. I heard the conversation; it was in the forenoon, in the front office of the bank. The bank was closed New Year's."

(Here defendant objected to anything said by M'r Becker at that
328 time, because it is not shown that he had any authority from defendant. The court overruled the objection, and defendant then and there excepted to the ruling of the court.) Witness answered:

"M'r Kountze asked M'r Becker to do something; either to pay up the claim or give some security or some acknowledgement of the indebtedness. M'r Becker refused to give any security, either trust-deed or Government bonds, or some other securities that might be asked, but said we need have no alarm about the payment of the claim; that he would go east in a short time from that—I don't know whether he stated the time—and would have the shareholders assessed and pay it up.

"M'r Kountze then wanted him to sign some paper that would definitely state the amount of the claim, and the only paper that he would give was this letter.

"I think one or two of my conversations with Becker was later than
329 this. I just asked him about the claim and that would be the end of it. I was present at a settlement between M'r Becker and M'r Sabin."

(Here defendant objected to any evidence in regard to the settlement between M'r Becker and M'r Sabin, because no part of the res gesta and immaterial. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Plaintiff here asked: "Were you ever present at any settlement M'r Becker, as president of defendant, and M'r George K. Sabin?"

The defendant objected to the witness answering. The court overruled the objection, and defendant then and there excepted to the ruling of the court. Witness answered, "I was." Plaintiff then asked the witness to "state what was said at that time." Defendant objected to

witness answering. The court overruled the objection, and defendant then and there excepted to the ruling of the court. Witness answered:

"It was in the evening, I think between 8 and 9 o'clock, or a
330 little earlier, M'r Sabin and M'r Becker came into the office of the bank. M'r Becker asked M'r Goodspeed to figure up M'r Sabin's account to same date, I think, in December. M'r Goodspeed did so, and told him the amount; it was one hundred and forty-five dollars and some cents. M'r Becker paid Mr. Sabin the amount and gave him a receipt to sign, then he turned around and told M'r Goodspeed and me that he discharged M'r Sabin as superintendent of Union Gold-Mining Company from that date. I don't remember whether there was anything said at that time about the debt to the bank, but M'r Becker seldom called without speaking of it. M'r Becker took charge of the property of defendant some time in December, 1868, or beginning of January, 1869."

Plaintiff here asked: "Do you know whether there was any debts against this defendant made by Sabin except the debt to the bank at that time?" to the witness answering which the defendant
331 objected. The objection was overruled by the court, and defendant then and there excepted.

Witness then answered: "I knew there were other debts from the statements made by Becker at the time he drew a draft on the treasurer of the company; he said he drew it for the purpose of paying up back indebtedness which had occurred under Sabin's administration."

Plaintiff here asked: "Did he draw more than one draft?" to witness answering which the defendant objected, and also moved to strike out of last answer all testimony in regard to a draft, but the court overruled the objection and motion, and defendant then and there excepted to the ruling.

Witness answered: "I think this indebtedness was between two and three thousand dollars. I made some entries in the books of defendant when M'r Goodspeed was absent. (Book of defendant handed to witness.) Yes, sir; these entries in Sabin's account were made by me. M'r Sabin brought the books to me and said he would like to have me write them up. I did so. M'r Becker came to the bank once and
332 asked to see the books, and I think I heard him speak afterwards as if he had looked them over. They took them away from the bank and afterwards returned them."

On cross-examination witness Potter testified as follows:

"I think it was in August, 1867, that I went into employ of plaintiff. When I speak of defendant mining on Bates lode, I mean what a person does in speaking of another mining, that they have a lot of men employed in taking out ore, sinking a shaft, and drifting. I have been at the mine frequently; know the defendant was mining it, by George K. Sabin.

"I saw the Union Gold Mining Company mining as far as one could see a corporation at work. It is my impression that the Union Gold-Mining Company was mining. M'r Sabin had charge of the work; he was agent. I know he was from general reputation, and because M'r Becker, as president, discharged him as agent. I know that now.
333 I knew he was agent in the summer of 1867 from general reputation; I heard it all around. He made purchases of Hindon Bro's, Langford & Co., Rowarth & Co. I know because the bills were paid by checks drawn on the bank. I knew what the checks were for, because

checks of that nature are daily in deposit from different customers of the bank; are supposed to be for goods sold.

"Am not very familiar with general duties of a mining superintendent; may have not mentioned all. The account was already running at the bank when I went there; I do not know the circumstances under which it was commenced. The dealing was closed before 31st December, 1868, but no final account was rendered before that time. The transaction was closed about the 20th or a little later.

"We paid several checks after the 16th. They were drawn after that and may have been dated before. The balance was struck, $21,217.06, on 31st December; it was all for overdraft except the one item of interest. The account was near fifteen thousand dollars, overdrawn
334 about 15th October, 1868. There was a credit made on the account on the 3d day of October of ten thousand dollars; it was withdrawn from the account, however. The balance outside of the ten thousand dollars was five thousand dollars about 1st October. The ten thousand dollars' credit consisted of one or two notes made by Sabin at the request of Goodspeed.

"I was present when those notes were made, and the amount of those notes, $10,000, was passed to the credit of defendant. The account was eleven thousand & odd dollars on 1st January, 1869, with these notes out. The notes were in the possession of the bank on 31st December. We considered the whole amount of $21,217.06 as overdraft on 31st December; did not consider the notes good.

"We did not consider the notes very good when we took them. I did not insist on having them. M'r Goodspeed asked for them and M'r Sabin made them. At the time the notes were made M'r Sabin said he had no authority to sign notes. M'r Goodspeed asked him
335 to make a draft on the company. M'r Sabin had told him there was about seventeen thousand dollars in the treasury, and he wanted him to make a draft. Sabin said he was not authorized to draw, and had no authority to sign notes, but that he would, to make the account appear in better shape on the books. Sabin requested that the notes be destroyed at the time and not appear in the account.

"M'r Sabin did not want the company to know about them, as they had not authorized *them* him to sign notes. I think M'r Becker was in Central or Chase Gulch at that time. Neither I or M'r Goodspeed or any officer of plaintiff notified M'r Becker of that transaction. I did not ask M'r Becker to make notes until December. I knew M'r Becker was in town; did not ask him to sign notes then; did not tell him of the transaction.

"I have not seen those notes since last term of court. No member of the bank corporation ever informed Becker of the existence of
336 those notes that I am aware of. These notes were passed to defendant's credit on our books, and yet there was $21,217.06 due in December, because we did not consider the notes good.

"We did not deliver the notes up; I think they were taken up by Kountze Brothers. We left the books as they were. If the 10,000$ credit was left standing, there would be only eleven thousand two hundred and seventeen dollars and six cents due. The books were not changed before that time. The $10,000 may have been erased: I don't know. It was erased in the pass-books of Sabin. I don't know whether I erased it or M'r Collins did. Our balance-book showed a balance of $21,217.06. The notes were taken off the account shortly after by Kountze Bro's. When it had to go into suit the notes had been taken off the accounts. We rejected the notes.

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"We paid several checks after the 16th. They were drawn after that and may have been dated before. The balance was struck, $21,217.06, on 31st December; it was all for overdraft except the one item of interest. The account was near fifteen thousand dollars, overdrawn
331 about 15th October, 1868. There was a credit made on the account on the 3d day of October of ten thousand dollars; it was withdrawn from the account, however. The balance outside of the ten thousand dollars was five thousand dollars about 1st October. The ten thousand dollars' credit consisted of one or two notes made by Sabin at the request of Goodspeed.

"I was present when those notes were made, and the amount of those notes, $10,000, was passed to the credit of defendant. The account was eleven thousand & odd dollars on 1st January, 1869, with these notes out. The notes were in the possession of the bank on 31st December. We considered the whole amount of $21,217.06 as overdraft on 31st December; did not consider the notes good.

"We did not consider the notes very good when we took them. I did not insist on having them. M'r Goodspeed asked for them and M'r Sabin made them. At the time the notes were made M'r Sabin said he had no authority to sign notes. M'r Goodspeed asked him
335 to make a draft on the company. M'r Sabin had told him there was about seventeen thousand dollars in the treasury, and he wanted him to make a draft. Sabin said he was not authorized to draw, and had no authority to sign notes, but that he would, to make the account appear in better shape on the books. Sabin requested that the notes be destroyed at the time and not appear in the account.

"M'r Sabin did not want the company to know about them, as they had not authorized *them* him to sign notes. I think M'r Becker was in Central or Chase Gulch at that time. Neither I or M'r Goodspeed or any officer of plaintiff notified M'r Becker of that transaction. I did not ask M'r Becker to make notes until December. I knew M'r Becker was in town; did not ask him to sign notes then; did not tell him of the transaction.

"I have not seen those notes since last term of court. No member of the bank corporation ever informed Becker of the existence of
336 those notes that I am aware of. These notes were passed to defendant's credit on our books, and yet there was $21,217.06 due in December, because we did not consider the notes good.

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"Sabin did not want the notes to appear on his pass-book, and so M'r Collins and I took them off. I think it was about the 20th De-
337 cember that I spoke to M'r Becker about the interest. I first asked M'r Becker for this indebtedness December 16th, 1868. I think that was the first I said to him about the debt. I don't know that any officer of plaintiff had notified him of the debt before. M'r Becker had been in Central from some time in September until December 16th. The first time I spoke to him about it I asked him to pay it. He appeared to know about the indebtedness; M'r Sabin frequently told him.

"I don't know what time in September M'r Becker arrived there; it was some time in September, & was there from that time afterwards. I could not tell what was the state of the account when Becker arrived in Central; it was about $15,000 about 1st October, or a little later. I believe M'r Becker was here about 1st October. I think the overdraft at one time was between 23,000$ and 24,000$; it was about the 16th December that it was the highest. I think it was over 23,000$ when I reported it to M'r Becker in Chase Gulch. The overdraft went up that way, after M'r Becker was here and M'r Sabin had told us he
338 had no authority to make drafts or sign notes.

"M'r Sabin represented to us that Becker would be up and make drafts. I did not ask M'r Sabin to draw draft; asked M'r Becker to do so. When I saw him in Chase Gulch that was the first time I said anything to him about it. I thought the notes were not good. We retained them until the last term of court.

"I never told M'r Becker of the notes or indebtedness until 16th December, 1868. I would not be positive about the words I used in Chase Gulch. I asked him to pay it, substantially; think I proposed to him to make drafts on the treasurer of the company, or to draw on his private funds, which M'r Sabin had represented would be done, or put up Government bonds. I think M'r Sabin had represented that Becker would put up Government bonds, or draw on the company, or on his private funds. That Becker had said he would do so. If the
339 notes were of no account it was of no use to tell anybody about them.

"M'r Sabin was the agent still, and said they were repairing the mill in Chase Gulch, and that it would be necessary for them to shut down for a certain length of time until the mill was put in condition; that M'r Becker objected to running ore through other mills, and on that account he wanted a temporary accommodation, and just as soon as the mill was repaired they would pay. They did not start as soon as was expected, and M'r Sabin said he had tried to have him lease mills outside to keep the account down, and Becker did not like to do that.

"All that time they were paying their men. We always supposed they were a good, safe company, had always treated us fairly, and on these accounts we allowed them to continue to overdraw until the amount reached the highest point named. And about a week before that was the time M'r Sabin had fixed for bringing M'r Becker's draft on
340 the treasurer of the company or some kind security for the debt, and as he had not done that, I went to M'r Becker on 16th December; called first at Sabin's and he went down with me. Don't know whether mill was running October 1st or not.

"Becker was putting up a big stamp; think it was not completed even in October or November. I did not think it was just the right thing to give the notes and keep them secret. I did not consider the agent superior to the president when the latter was present. M'r Becker

said once or twice in conversation that he would go East and lay the matter before the company.

"Was present at conversation between Becker and Charles B. Kountze on 1st January, 1869. I had one or two conversations with Becker myself before this, and one or two after. I believe Becker always told me he would lay the matter before the directors. In conversation with Kountze, Becker may have said directors or shareholders; I don't
341 know which. M'r Kountze tried hard to get security and I think he presented papers for him to sign. Becker refused to give any security; said he would go East in a short time and have the shareholders assessed.

"I think M'r Kountze had but one paper he wanted him to sign, although he asked him to make out a paper in his own way if he would not sign the one he had drawn up. Wanted to have recognition of the debt. I don't know whether there had been a meeting of attorneys or not. I think there was a conversation with an attorney; think M'r Kountze had M'r Teller draw a paper from what these said. He wanted to get a recognition of it because from the action of M'r Becker he did not want to make a statement of the account any way except in words. That was better than the notes we took. We were anxious about when we notified Becker; we had been a little anxious before that time; Sabin had said that Becker would put in bonds or make drafts on the company. He kept putting us off with excuses.
342 We went down for the purpose of asking Becker. It had frequently occurred to me to do so from 1st October to 16th December, but Sabin said he would do it in a day or two—had fixed the time once or twice, and he did not do it, and I thought it necessary to see Becker in person.

"Sabin had promised for three or four weeks before I went to see Becker. Sabin rather requested us not to say anything to Becker about it. I think he fixed about the 10th December that Becker would fix it up. What I meant to say is that Sabin had represented to us, as agent of the company, that Becker, as president, as soon as the repairs on the mill were completed, would settle the entire amount of the indebtedness. It was Becker's mill, I believe, and run at the expense of the company. I think Sabin said he was to work No. 2 or No. 3 on Bates Lode as rent for the mill. He told me so; he frequently said so. Think he first said so along in the summer of 1868, some time.

"Don't know who owned No. 3 on Bates Lode. Sabin spoke
343 about some claim he was to work, No. 2 or 3. He said M'r Becker owned it."

Here defendant *here* asked the witness: "Then you knew, from some time in the summer—your bank knew from some time in the summer—that the claim number two or three, whatever it was, that belonged to Becker & that mill, were being worked and run with funds got by the Union Gold-Mining Company?" To the witness answering which the plaintiff objected, because not cross-examination. Attorney for defendant said: "It is certainly competent for us to show that this money was not used for the purposes assigned by witness."

Witness said, "I did not intend my testimony to carry any such idea as that."

The court sustained the objection, and the defendant then and there excepted to the ruling of the court.

"M'r Becker had always admitted the claim in his conversation, & we wanted something in writing to show it in case he should change his mind, or anything should happen to him. That is about the im-

344 pression I get from the conversation, January 1st, 1869. I don't remember it exactly; that is about the tenor of it. I think M'r Becker was asked to sign this letter in his official capacity; he did not do it; he refused to do it; said he would rather not do that, or something of that kind. I do not think he said he would do nothing to bind the company to the payment of the debt. I do not know what his reasons were; he objected to it.

"It must have been some time in December that I wrote up the accounts in defendant's books. I wrote them up from October till December, over 2 months. I think it was about the 16th December that I wrote them up. I think it was Sabin who came and said Becker wished to see the books. They were in the vault. The door was open.

"I gave them to Sabin. They did not examine them in the back room; they took them away; kept them a month or six weeks and brought them back. I think he took them away from the bank.

345 I don't know that Becker examined them except what Sabin told me when he brought the books back, or afterwards.

"He brought them back probably in January or February, and he took them away in the early part of January. Long after these transactions were all closed Sabin brought the books back to me, and they were put in the vault.

"This was afterwards Goodspeed' return from the East; don't know whether he was in the bank at the time or not; Goodspeed was cashier.

"I have testified in this case before. I say now that the balance due the bank about 1st or 3d October, 1868, was somewhere about $15,000. Perhaps I testified on a former trial that the balance on 3d October was 12,061$; I must have said it was on the first; it had changed by the third. I testified from the books before. I think the balance was more than 21,942$ on the 16th December. When I said on the last trial that I had remarked conversation with Becker except 16th December, I mean that I had no other remarkable conversation. This

346 was so much longer; he did not appear to be ignorant of the indebtedness at all.

"I have detailed the conversation at Elliott's house substantially; there may have been other remarks made that were immaterial.

"I testified on the former trial that I asked Becker every time I saw him; it is true. I testified on former trial that I wrote to M'r Kountze to come up & he did so. I did not hear that conversation between him and Becker; it was the 18th or 19th of December. That is not the same conversation I have detailed. I don't remember whether I testified to more than one conversation between Becker and Kountze or not. I testified on former trial that Kountze was urging on Becker the necessity of settling up the claim, and wanted Becker to give him some kind of acknowledgement of the debt. Becker said, Oh, no; he would not give that to anybody. I testify to that now."

347 On redirect examination witness, Potter, testified as follows:

"The notes I have mentioned were never paid."

Plaintiff here asked witness this question: "How was the account treated in all the dealings with Becker and conversations with Becker?" to the witness answering which the defendant objected, because it is not redirect examination of any new matters brought out on cross-examination. The court overruled the objection, and the defendant then and there excepted to the ruling of the court.

Witness then answered: "It was treated as an overdraft."

Plaintiff asked the witness to "State what the arrangement with

Sabin was; whether it was the fact to keep from Becker that there was an overdraft, or simply not to call on him for these drafts until the 10th December."

The defendant objected to the form of the question, the objection was overruled by the court, and the defendant then and there excepted to the ruling of the court.

348 Witness then answered: "There was no arrangement whatever with Sabin to keep the knowledge of the overdraft from Becker, and we supposed (here defendant objected to witness stating what he supposed, and court overruled objections, and defendant then and there excepted to the ruling) from the conversations Becker knew all about it. These notes remained at the bank until last term of court, when they were handed in and cancelled by Judge Belford."

Here the plaintiff offered in evidence the letter of Becker to president of bank, dated January 1st, 1869, to which the defendant objected, 1st, because it is immaterial; 2nd, because it is unofficial; 3d, no part of the res gesta; 4th, if it was official, there is no power or authority shown in the president to make declarations that would be obligatory

349 upon the company. The court overruled the objections, and defendant then and there excepted to the ruling of the court.

Plaintiff then read the letter to the jury as follows:

ROCKY MOUNTAIN NATIONAL BANK,
(Successors to Kountze Brothers, Bankers,)
Central City, January 1st, 1869.

To the president of the Rocky Mountain National Bank:

SIR: In regard to the overdrafts of our company in your bank, permit me to say that although I am the president of the Union Gold-Mining Company, & the owner of a majority of all the stock, Mr. Sabin will do me the justice to state that I had no knowledge of any overdrafts until on or about the middle of December last. I hope you will not feel uneasy about the payment. We have an abundance of ore already broken in the mine to pay all indebtedness of the company.

350 In fact, this is the only indebtedness I have any knowledge of the company's owing; and if it is not paid off out of the mine, I propose to call a meeting of our directors and submit your claims and make an assessment at our February meeting in New York City to pay off your claim and any others that the company may owe.

I will also state to you clearly and plainly that there shall be no sales, transfers, mortgages, assignments, deeds of trust, or any other incumbrances put on the property of the company in Colorado or elsewhere by myself or by the company until all of the liabilities of the said company are fully paid.

Very resp't'ly, y'r ob't ser't,

THEODORE H. BECKER.

Plaintiff then called WILLIAM H. TAPPAN, who was sworn as a witness, and testified as follows:

"I resided in Central City in 1866, 1867, & 1868. Was in hardware business.

351 "I know the plaintiff and the defendant. Known defendant since 1867 or 1868; it was engaged in mining and milling in 1867 at Central City. George K. Sabin was agent of defendant in 1867 & 1868; was buying goods in their name—in name of Union Gold-Mining Company. He was running the mine or mill of the company; the mine was between a half & three-quarters of a mile from my place of business.

"Defendant had an office on Lawrence street, in Central City, a few

doors below my store. Sabin occupied the office in 1867 & 1868. There was a sign on the side of the door of the Union Gold-Mining Company. Sabin had the management of the mining and milling operations, as I understood it; I mean the mining operations of the Union Company. I had transactions during these years with this company."

Plaintiff here asked the witness to "State what they were, & how the business was transacted?"

352 Defendant objected to the witness answering, and the court overruled the objection, and defendant then and there excepted to the ruling of the court. Defendant objected, because, 1st. It is not shown whether it was previous to the time of contracting the debt or during the time. 2nd. That it is not of the same kind as the transaction in controversy between the parties to this suit. 3–4th. There is no evidence that the defendant knew of the transaction.

Witness then answered: "With M'r Sabin, in the name of the Union Gold-Mining Company. He bought mining supplies, such as steel, rope, and tools from time to time, and those bills were paid generally by checks upon the banks. These bills were settled about once a month. I think latterly they were longer than that towards the closing up of the operations. I think the last payment was in June, 1869. M'r Becker made that payment. I think some of the earlier checks were on Clark's bank, and after that on the Rocky Mountain National Bank; that is my impression; am not positive. I was not in Central previous to 1867.

353 (Here witness was handed a check.) "This is a check given to our house, I should judge. That was the style of giving checks. I can't tell how many checks were given to our house during the time I have mentioned. I have no doubt that check is in handwriting of George K. Sabin. I have seen him write. That appears to be his signature. He might have given me a dozen checks or more; the accounts were running over 2 years."

Plaintiff here asked: "Were all the checks signed in this way?" To the witness answering which the defendant objected, because the checks themselves are the best evidence. The objection was overruled by the court. The defendant then and there excepted to the ruling.

Witness answered: "They were all given by M'r Sabin. I don't remember what time M'r Sabin quit dealing with me in this way. The last item on the book was May 27th, 1869. I suppose that was the time he quit. I had dealings with him in December, 1868. I know he had a bill there that month; can't tell the amount. I don't know when

354 that was paid, they were all paid by Sabin except the last, and that was paid by Becker. M'r Sabin purchased the goods last paid for in the name of the Union Gold Mining Company. Some of these goods were used in the changes and repairs that were being made in the mill, and as the other were supplies for mining purposes, I supposed they were used there."

Plaintiff here asked the witness "To state what these supplies were, as near as you can, itemizing them, giving particulars." The defendant objected to the witness answering. The objection was overruled by the court, and defendant then and there excepted.

Witness answered: "According to my recollection, they were parts of machinery that was used in the mill; they were putting in a large stamp at the time. There were steam connections, there were bolts and ropes, probably other things used about mills of that kind. The supplies that went to the mine were steel, picks, handles, tools. When these checks were given I think they had a bound receipt-book & they were signed by me."

355 Plaintiff here asked the witness: "To whom were these receipts made?" To the witness answering this the defendant objected, because the receipts were the best evidence; the objection was overruled by the court, and the defendant then and there excepted to the ruling of the court.

Witness answered: "To the Union Gold-Mining Company, (witness was shown receipt-book;) I should think that is the kind of a receipt-book—something like that; the receipt-book something like that. The receipts are generally given in duplicate, but not always. I don't remember whether theirs were or not by duplicate; I mean two bound on one page, and both were signed. That is the custom in giving receipts to mining companies, but it is not invariably the case; I don't remember whether I signed theirs in duplicate or not."

On cross-examination witness, Tappan, testified as follows:

"When I say defendant was mining and milling in 1867 & 1868, I mean the Union Gold-Mining Company.

356 "I merely knew them through M'r Becker, as president, and M'r Sabin, the superintendent; I mean Sabin and the company were both mining; Sabin was the active man for the company. I knew this because he occupied an office and transacted business for the company in their name; he gave checks so in their name. I have no other evidence. Sabin occupied part of the office as a sleeping-room. There was a sign on one side of the door; I should regard that as some evidence. There are buildings in Central with mining signs on them without any business having been done in them for years.

"The checks for supplies bought of me were all signed in the same manner—all signed by George K. Sabin in his name. I think they were signed George K. Sabin, agent, as I remember the signature. I am not positive how the earlier checks were signed on Clark & Co.; I think some of them were signed Union Gold-Mining Company, by George K. Sabin, agent, and some of them just George K. Sabin, agent.

357 "I am not positive about these checks on Clark & Co.; it is a long time ago. I think I had some checks on Clark & Co. Sabin was running ore in a mill. I always supposed it to belong to the same company. I don't know anything about it. I don't know whether they run any other than the company's mines or not. I don't remember when the change took place in the management of the work. I remember selling goods to Sabin and Becker. I remember that a change did take place. I don't remember when the change took place. I merely know that the last purchase made so, & it was previous to that purchase, but who was agent I don't know. I have no recollection of the time of the change. The change must have been prior to the payment for the last bill of goods. The last bill was paid by Becker in June, 1869.

"I have no recollection what part of those bills bought by Sabin was for machinery, bolts, &c. They were putting up a big stamp

358 somewhere between 1867 & 1869. I have no recollection as to what part of these goods were for the mill and what for the mine."

Defendant then asked the witness: "Do you not know that in May & June, 1869, at the time you testified to, Mr. Sabin was running a mine at Nevada?"

(Plaintiff objected, because immaterial and not proper cross-examination. Court sustained objection, and defendant then and there excepted to the ruling of the court.)

Plaintiff then called JOHN O. REYNOLDS, who was sworn as a witness, and testified as follows:

"I have resided in Central City since 1865; am in the powder, steel,

and rope business; am now in powder & fuse business; know plaintiff & defendant; have known defendant since 1864 or 1865."

Plaintiff here asked the witness: "What was this company doing in 1865?" Defendant objected to witness answering, because this was long prior to the transactions with defendant. The court over-
359 ruled the objection, and the defendant then and there excepted to the ruling.

Witness answered, "Mining on the Bates Lode; can't tell when they commenced mining there; M'r Mallory was in charge when they commenced. I had dealings with defendant while Mallory was in charge. M'r Sabin was in charge of their property in 1866 & 1867. M'r Sabin commenced to take the water out in 1866, in November, but the first bill he made was December 8th, 1866. In November, 1866, he was getting ready to go to work, fixing his engine up on the lode. I believe he changed engines. In 1866 & 1867, defendant was mining and milling; mining on Bates Lode & milling in Becker Mill, Chase Gulch."

Plaintiff here asked, "Who was superintendent or agent of defendant during that time?" Defendant objected to witness answering. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Witness answered, "George K. Sabin was agent of the company,
360 or at least he signed his name as agent. The company had an office just below my house on Lawrence street; George K. Sabin occupied the office, and Becker when he was out here, and I think Baker was in there. There was a sign on the building, on the lower side or right-hand side; it was the Union Gold-Mining Company. Sabin had charge of the mine, he settled bills at the office, made contracts for timber & wood, &c., with people there. I had dealings with defendant during that time."

Plaintiff asked witness to "State when the dealings commenced & how the business was transacted." The defendant objected to witness answering, and the court overruled the objection, and defendant then and there excepted.

Witness answered, "They commenced by his buying powder, steel, &c., on the 8th December, 1866, and then he bought powder, fuse, steel, & iron right along till he quit, in December, 1868. The account was kept in the name of Union Gold-Mining Company.

"These bills were paid monthly, except the first two months' bills
361 were paid in February. He paid his bills in full up to the 28th February, 1867, and after that monthly he took receipts thus read: 'Received of the Union Gold-Mining Company,' (here receipt-book was shown witness.) These are the same from a copy. He never took any duplicate of me. He took a receipt every time he paid. Payments were made by checks on Rocky Mountain Nat'l Bank, generally. (Checks shown witness.) These are checks received by me; they are in George K. Sabin' handwriting; the checks were signed same as those.

"The last payment was made to me on Sabin' advice March 16th, 1869. Mr. Becker paid the bill. Mr. Sabin purchased some of the goods in the last bill, & Mr. Becker went to mining right after Sabin quit, and his bill was charged right along in same account. I could not swear there was a balance left of Sabin's account when Becker went to mining. Come to think of it, I am pretty sure it was the balance Becker paid me.

I cannot swear exactly. I have a few memorandums of payments
362 made. On October 7th, 1868, there seems to be some powder returned by Union Gold-Mining Company, or something they paid that day. These are checks received by me from Sabin in pay-

ment for the bills I have mentioned. The last payment made by Sabin to me was about the 1st December, 1868; but I can't say certain till I see the books. (Here a check was handed to witness.) This is the November bill; probably the left of it. Sabin kept purchasing goods of us right along till he quit, in December some time, 1868."

On cross-examination witness, Reynolds, testified as follows:

"Sabin commenced takin' out water in November, 1866; he was running. I don't know about his being milling as early as that—not till December or January. I can't tell he started Mr. Becker's mill in Chase' Gulch, called Douglas mill. All I know about Sabin's being agent was he signed his name as agent. Sabin used the office. Becker did not stop there. I used to see him in there some times writing.
363 Topping occupied that office a while. I believe Topping occupied the office as a sleeping-room some time after Sabin returned from the East. There was a sign up there—had Union Gold Mining Co. on it. I don't remember of other buildings having signs on them where no business was done.

"The first account Sabin contracted with me was *in* December 8th, 1866. There was no contract; he just came there and bought goods. Sabin said something about time; that he did not want to draw on the company; had a delicacy about it; was bound to put it through; should not pay for a couple of months; there was something of that kind said I am very sure; still I don't remember. He told me he did not want to draw on the company; was bound to make the mine pay; knew he could make it pay. I think I made the remark that the mine was good for it; he paid me part on the 19th February, and paid the whole of it February 28th.

"I can't tell whether he paid a check or money on the 19th February. I can't swear how he paid on the 28th February; could not swear without I saw the check; he gave checks. I don't remember his ever
364 paying me a dollar in greenbacks; still he may have done so. If he gave me a check, I can't swear what bank it was on.

"He did most of his business with the Rocky Mountain Nat'l Bank. I don't remember whether the first check, he gave me were on Clark & Co. or not, or how they were signed. I would not swear that the checks were all signed alike; the receipts were all the same. The checks on the Rocky Mountain National Bank were all signed alike; don't know about the others. I think the last check Sabin gave me himself was on the 3d December, 1868; it did not pay the full amount, I am satisfied; after that M'r Becker took charge of the mine."

On further direct examination witness, Reynolds, testified as follows:

"I am satisfied the check of December 3d, 1868, did not pay the full amount."

Here the plaintiff offered in evidence the several checks identified by witness Reynolds and by witness Goodspeed as being in hand-
365 writing of Sabin and marked by court. Defendant objected to their introduction for same reasons as given in regard to other checks, but the court overruled the objection, and defendant then and there excepted to the ruling of the court.

1st check dated—

SEPT. 15, 1868.

Rocky Mountain National Bank pay to Reynolds $325.75.

(Signed) UNION GOLD MINING CO.,
GEORGE K. SABIN, *Agent.*

2d. Central City, Col., June 1st, 1868. No. 88. Rocky Mountain National Bank pay to J. O. Reynolds, or bearer, $385.65. Signed same way.

3d, dated July 6th, 1868, for $173, signed as before.

4th. No. 48; date, August 3d, 1868; amount, $317.

5th. Dated Nov. 3d, 1868, for $262.30.

6th, date Dec. 3d, 1868, for $150.00.

All payable and signed as the first.

Plaintiff then called WILLIAM M. ROWORTH, who was sworn as a witness and testified as follows:

"I reside in Central City; have resided there nearly fourteen years, and in grocery & hardware business as merchant have been for thirteen and one-half years; know the defendant; have known them six or eight years, only through their agent. Defendant carried on
366 mining in Gilpin County, I believe; don't know when it commenced. Mallory was first agent. Defendant was engaged in mining on Bates Lode in 1866, 1867, & 1868. George K. Sabin was agent of defendant in those years; was mining on Bates Lode, Union Company proprietor. Defendant had an office in Central City there; on Lawrence street. I believe Sabin and Becker occupied the office; there was a sign on the side of the door. I think the office was bought by the company in 1865. I understood so. I believe Col. Mallory occupied it while he was agent."

Plaintiff then asked witness this question: "During the time you say Sabin was agent of this company, did you have any dealings with defendant? If so, state when it commenced, and the nature of the dealings."

The defendant objected to the witness answering, because, 1st. It is not shown whether it was during the time or previous to the time this debt was being contracted. 2d. That it is not of the same kind as the transaction in controversy between the parties to this
367 suit. 3d. There is no evidence that defendant knew of the transaction. 4th. No evidence that the plaintiff knew of the dealings. The court overruled the objection, and the defendant then and there excepted to the ruling of the court.

Witness answered: "It commenced in December, 1866. He bought candles, iron, shovels, picks, handles, various mining-tools. The account was kept in the name of the Union Gold Mining Company. These accounts were paid; paid by checks usually; I don't recollect of his paying any currency; usually paid monthly. There were bills made out monthly and given to Sabin. There were receipts taken by Sabin at the time he paid in the name of the Union Gold-Mining Company."

(Receipt-book handed to witness.)

"I think that is the form of the receipt. Think Sabin was in the babit of taking receipts when he paid. We rendered bills with all items purchased during the month. This dealing continued from one to two years."

(Checks handed to witness.)

368 "I think that is George K. Sabin's handwriting. I have seen him write. I don't know whether these same checks were received by us in payment of bills, but I presume some of them were. Have taken a good many checks from them. The ones we took were signed Union Gold-Mining Company, George K. Sabin, agent. I can't tell when the last account against the company was paid. M'r Becker paid it, I think. Do not know the amount of it. I think T. H. Becker paid the last bill; I recollect having some conversation with him."

On cross-examination witness Roworth testified as follows:

"I testified in this case on a former trial. I don't recollect what my testimony was now. All I know in regard to Sabin's agency is general reputation and what M'r Sabin said at the time he commenced this account with us. He said he was authorized by the company to start up their property on the Bates lode. Those were the words he stated.
369 No particular agreement was made in regard to the account. He said that he did not know that he would be able to pay the first month's bill; he had to refit the mine and probably would not be able to pay on 1st January; that he did not wish to draw on the company for funds; wished to make the mine pay its own way.

"He said he did not wish to draw on the company. From that I inferred that he had authority. There was no particular arrangement, except that he said he would not be able to pay the first month's bill. He paid it in February. Can't say how he paid it. I have no recollection if any checks except on the Rocky Mountain National Bank. The account was paid the 4th February. Whether a Rocky Mountain check or not I could not say. I could not say whether we got any Rocky Mountain checks before April or not. The next account was paid the 1st or 2d March, 1867; can't say how; think by check; don't know what bank."

Plaintiff here offered in evidence the checks spoken of by the witness.

Defendant objected to them for same reasons as other checks, immaterial & irrelevant. The court overruled the objection, and the
370 defendant then and there excepted to the ruling.

Checks payable to Roworth & Co. on Rocky Mountai· Nat'l Bank, dated Dec. 6th, 1868, for $133.00, signed Union Gold-Mining Company, by Geo. K. Sabin, ag't. Also, check No. 83, dated Central City, June 1st, 1868, for $167.83, signed as before and to same order. Also, No. 97, date Sept. 6th, '68, for $138.25. Also, No. 34, July 6th, '68, for $162. Also, No. 8, dated Dec'r 3d, '68, for $316.08. Also, No. 44, dated Nov. 3d, '68, for $175.80; all to same order & signed the same.

Plaintiff here called CHARLES C. WELCH, who was sworn as a witness and testified as follows: "In 1866, 1867, & 1868 I resided part of the time in Gilpin County a portion of each season, up to about January and February. I was there in spring and summer of 1868; know defendant; it was engaged in mining on the Bates mine in summer of 1868. George K. Sabin was agent of defendant in 1867 or 1868. Defendant had an office in Central City, on Lawrence street. Office was occu-
371 pied by George K. Sabin. T. H. Becker was there at times, and some portion of the time Judge Baker was there; think he occupied it as sleeping and writing room. The business of settling the accounts of the company was transacted there. I was there frequently. The sign of the Union Gold-Mining Company was on the building. Don't know who occupied the office before Sabin did. Sabin settled the accounts in the office. I have seen men come in there frequently, and the Union Gold-Mining Company's books were opened. The books were kept there. The books were a regular set of books, such as would be kept by a mining company. I have seen receipt-books & check-books both there. They were kept in a desk. Can't say how often I have seen Becker there; quite a number of times in and out. I don't remember now whether I ever saw Becker about there when business was being transacted there by Sabin.

"I don't know the exact time when Sabin commenced working the

property. I was here in the fall of 1866. I remember the time
372 when Sabin came back and was to start up; don't remember the month. I remember the fall when he started, and the conversation when he started up the mine."

On cross-examination, witness Welch testified as follows:

I was in Gilpin County part of each year 1866 & 1867 and 1868. I was there in 1866 & 1867 and the fore part of 1868, till February; am not quite sure I was there then. I know Sabin was the defendant's agent by his talking to me. I knew he occupied the office of the company, and have seen men in there doing business, the books of the company opened, and he taking receipts and giving checks. I could not tell what particular books of the company I have seen open. The books I consider would be called account-books. I don't remember whether those large books were in the name of the defendant.

"Sabin has often told me he was agent of the company. I saw him using those books, keeping accounts; saw him writing in them at different times. I saw him writing in them during the year 1867
373 certain. I could not tell you how much I saw him writing in them at different times. I have seen him have them open keeping accounts. The books were kept in the desk; that is the only place I saw them. The books were in the office. I saw him writing in them. Can't tell what book I saw him write in or what he wrote in them. I saw him write checks. I could not tell you what he wrote. It was none of my business what he was writing. It is my recollection that I did see him write in them in 1867 & 1868. He said they were the books of the defendant. We talked it over time & time again. I did not ask him about them. I knew he was acting as agent of the Union Gold-Mining Company. He had often told me, and he was writing in the books that he had, and men came in and out. I could not mention any one in particular. I have seen men come in at different times. I frequently sat there evenings, and sometimes day-times.

"When Sabin came back to commence work on the mine he
374 talked it over with me. He said he wanted to open the mine, and that he had a pride in doing it without drawing on the company. He said the mine could be made to pay without drawing on the company at all, & he had a pride in doing so. He told me at different times that he could draw on the company—there was money he could draw. His remark to me was, that he had a pride in opening the mine and making it pay; that the former agent had made a failure of it, and he told the company he could make it pay; that was about the amount of his conversation.

"I could not set any particular time that I saw the books in the office. I was in and out. I did not see them every time I was in. I saw him write in them several times. I was in the office frequently; used to sit in there when I had leisure time. I just saw Sabin write as I would see you write. It is not my business what you write. Of course I listened to what was said. I saw him frequently write in other books
375 than the check-book or receipt-book in 1867. I saw him frequently; don't know how many times, and I supposed they were company books; that is the best of my recollection."

Here the plaintiff offered in evidence the receipt-book shown to the witness before, and the defendant objected, and the court sustained the objection.

CHARLES B. KOUNTZE was then called by plaintiff, sworn as a witness, and testified as follows:

"I know plaintiff. Know defendant; have known it some years; think since 1865. Defendant had transactions with Rocky Mountain National Bank. It had an account there in 1867 & 1868. I know M'r Becker."

Plaintiff here asked the witness: "Did you have any conversation with M'r Becker about this indebtedness? If so, state when it was."

Defendant objected because it has not been shown there was any indebtedness. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

376 The witness then answered: "I don't know that I can fix the exact time of the first conversation. It was in fall of 1868; I I think in December. In my testimony before I did not fix any time. I think I said it was in November or December, but I believe it was in December I went to Central; sent for Becker to come to the bank; he came. I talked with him about the indebtedness. He knew of it at that time."

Plaintiff here asked this question: "State what was said."

Defendant objected because no authority has been shown in M'r Becker to make any statement binding the defendant, but the court overruled the objection, and defendant then and there excepted to the ruling.

Witness then answered: "I asked M'r Becker to pay the debt, to settle it up. He seemed to be willing to settle it up & pay it up; made no objections to it. Wanted to know what the account was. I stated the amount to him at that time. I don't now remember just what

377 it was; between 20,000$ & 22,000$, or a little over $21,000. When I saw him, that was the first time I saw him. He said the company would pay it; it was all right; that the money was used on the property of the company. He was sorry that the debt had been made by M'r Sabin, but they had plenty of ore, which was taken out with the money they got from the bank; that the property was incumbered, and we need feel no alarm about the debt. I think he at that time also proceeded to see if he could not find a purchaser for some of the ore to pay up this debt. The conversation was something of that character all through. I cannot repeat the conversation word for word.

"I had a subsequent conversation, a few days after the first one. At this second one we talked over the debt again, and he assured me that we should have our money. That M'r Sabin had used the money on their property in milling & mining; said we should have no alarm; that the debt was all right and would be paid. This was before the letter was written. On the 1st of January, 1869, I had got tired of his

378 promising and saying the debt was all right and he intended to pay, and told him I wanted something to show for it; I wanted something to send my brother, to satisfy him also that the debt was all right, and he seemed to be perfectly willing and satisfied to do anything we wanted him to do about it. I had a paper then which had been drawn up which I handed him to sign; don't remember what it was. I think it was something that would have given us a lien on the ore—on the property.

"I presented it to M'r Becker to have him sign it and he became quite profane, and therefore I insisted that he would have to do something about it, and he went to the desk and wrote that letter. I have detailed that conversation as near as I can, substantially.

"I talked with M'r Becker very often. Becker always assured us that

it was all right and would be paid; he would see that it was paid. In the previous conversations he also spoke of having the shareholders pay it; wanted to have an assessment levied after the first
379 of January. He said he would go east very soon, and when he got east would have an assessment and have the debt paid. Never said anything about the debt not being right. He knew the account at the time of these conversations. I have figured the interest on this account sworn to by Good peed. The amount when the suit was brought was $21,217.06; in that was an item of $459.55 from the $21,217.06, and computing interest on $20,747.51, at ten per cent. per annum, from January 1st, 1869, to the present time is ten thousand one hundred and eighty-three dollars and twenty-three cents, all together $30,940.74. If the item of $459.55 is left in, the amount would be $31,400.28; that is, adding the item of interest without adding any interest to that item.

"I think I knew of Becker going east in spring of 1869. I saw M'r Becker quite often before he went east; probably within a few weeks of that time. I am a director in the bank. Herman Kountze was president. It was him I wanted to satisfy that it was all right."

380 On a cross-examination witness Kountze testified as follows:

"My first conversation with Becker was in the fall of 1868. I think in December—in the winter. I think it was after the 16th December. I don't think there was any one present at that conversation except M'r Becker & I. I think M'r Sabin was present at the second conversation; this was a few days after the first, and prior to 1st January. I believe the next was on the 1st January, or about that time. M'r Potter was present at that conversation and M'r Becker & I. This was same conversation testified to by M'r Potter; he was present; don't know whether he heard all of it.

"I heard M'r Potter's testimony. In that conversation M'r Becker did not object to the amount. I don't know the exact words he used, but he gave me to understand that the debt was all right; he talked as if he was willing to do anything we asked. I presented something that would be called a deed of trust for him to sign; he did not sign it; he became profane and said he would not do it. I would liked to
381 have him sign it; he would not. He said he would give us something, and I requested him to do so, and he stepped to the desk and wrote that letter. I asked him to sign it as president, and he said he did not like to sign it that way; that was another thing he would not do.

"I testified on the former trial of this case. I think I then said that Becker said the debt was all right, or something to that effect. I don't think I then said that Becker told me Sabin had no authority to contract the debt. I don't know whether I testified on last trial of this case that I could not remember the 2d conversation. I don't remember whether I did or did not, on the former trial of this case, testify that 'I did know that the overdraft was increased after my first conversation with Becker; that I thought no one else was present at my first conversation with Becker; Potter may have been.'

"I don't remember my next conversation with Becker. I should think my recollection then would be as good as it is now. M'r Becker always said we need not be alarmed about the debt; he said he wanted
382 the shareholders to help pay it. He proposed to see if he could not sell the ore and pay it in that way; if he could not do that, then have the shareholders help pay."

Plaintiff here called HERMAN KOUNTZE, who was sworn as a witness, and testified as follows:

"I am president of plaintiff; have been since 1867 or 1868. I know Theodore H. Becker. I first met him in spring of 1869, some time in March or April; can't fix the date exactly: saw him at First National Bank, Omaha. I then knew that plaintiff had a demand against defendant.

"I had no conversation there with Becker. I overheard one between him and my brother Augustus. I don't know that I can give the whole of the conversation. My brother and I occupied an office back of the bank office. Becker came to bank and asked for one of us. Brother was nearer door than I was and would generally meet and entertain
383 people when they come to enquire. They were sitting at the desk, and a gentleman came in and they entered into conversation. I paid no particular attention at first, but soon learned they were talking about this indebtedness to the Rocky Mountain National Bank. I then gave some attention.

"Mr. Becker remarked that he was then on his way east with a view of calling a stockholders' meeting to have the claim paid; that the claim was a just one, the company had the use of the funds, had the benefit of the funds, and it should be paid. Those were about the main features of the conversation. My brother, of course, urged the payment of the claim. I never heard any other conversation with Becker. I did not see Becker after that till about 15 months since, when he came into the office at Omaha again. I did not see him in spring of 1869 in New York."

On cross-examination witness, Herman Kountze, testified as follows:

"None of these conversations were held with me; all with my brother. It was in spring of 1869; think in March or April; would not be
384 positive; think it was prior to bringing this suit; think the suit was brought in April; don't know the day. I think the conversation was before the suit was brought. I don't remember whether I heard the first part of the conversation or not; I think I did—think I heard all the main features of it; was sitting within three or four feet of them when they were talking. I think Becker at that time told my brother he was going east and was agoing to make an assessment to pay this debt, and that it was all right. I did not understand that he had been east, and was there on his return. He did not tell us that the stockholders refused to do anything about it, and advised you to bring suit, and you said suit had been brought. I never heard any such conversation. Am confident Becker said he was then going east."

Plaintiff here offered in evidence interrogatories 9, 10, & 11, and the answers thereto, of the deposition of Luther Kountze.

Defendant objected, because the conversation purporting to be
385 detailed occur'ed in 1869, without fixing any time; it is not shown that they occur'ed prior to bringing this suit. The court overruled the objection, and defendant then and there excepted to the ruling, and said interrogatories and answers were read to the jury.

Here the plaintiff offered in evidence interrogatories 7, 8, 9, 10, 11, & 12, and the answers thereto, and cross-interrogatory 3 and answer, and the defendant objected to their being read in evidence. The objection was overruled, and the defendant then and there excepted to the ruling of the court; and the said interrogatories and answers were read to the jury.

Plaintiff also read in evidence interrogatories 7 & 8 and answers of

the deposition of Luther Kountze, and the answers to cross-interrogatory 3, "Such conversation occurred at my office, No. 52 Wall street, in this city, during the early part of the year 1869. I cannot state the exact date of each. M'r Augustus Kountze was present at several of the conversations."

The plaintiff also read in evidence (Teller) from the deposition
386 of Augustus Kountze, interrogatories 7, 8, 9, 10, 11, & 12, and the several answers thereto; also cross-interrogatory the 7th, same deposition, and answer thereto, showing the time of conversation referred to. Defendant made the same objections as to the ruling of the deposition of Luther Kountze.

19936.

TERRITORY OF COLORADO, *County of Jefferson, ss:*

The people of the Territory of Colorado to Thomas L. Carpenter, esq., of No. 47 Wall street, in the city of New York, in the State of New York, greeting:

Whereas it has been represented to us that Augustus Kountze, of said city and State, is a material witness in a certain cause now depending in our district court for the second judicial district of Colorado Territory, within and for the county of Jefferson, where the Rocky Mountain National Bank of Central City is plaintiff, and the Union Gold-Mining Company of Colorado is defendant; and that the said witness
387 resides at New York City and State of New York aforesaid, without the said Territory of Colorado, and that his personal attendance cannot be procured at the trial of said cause:

Now, therefore, know ye that we, in confidence of your prudence and fidelity, *are* appoint, and by these presents do appoint, you commissioner to examine the said witness, and do therefore authorize and require you to cause the said witness to come before you at such time and place as you may therefore designate and appoint, and diligently to examine the said witness on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon the interrogatories and cross-interrogatories included with or attached to these presents, both on the part of the said plaintiff and the said defendant, and none others; and the same, when thus taken, together with this commission and the said interrogatories, to certify into our said district court with the least possible delay.

Witness John R. Cleaveland, clerk of said district court, and
388 the seal thereof, at Golden City, in said Jefferson County, this thirtieth day of September, A. D. 1872.

[SEAL.] JOHN R. CLEAVELAND, *Clerk*,
By CHESTER C. CARPENTER, *Dep'ty.*

In district court, 2nd judicial district, in & for Jefferson County, to the November term, A. D. 1872.

TERRITORY OF COLORADO, *County of Jefferson, ss:*

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } In assumpsit.

The above-named defendant is hereby notified that on the 30th day of September, A. D. 1872, we will sue out of the clerk's office of the dis-

trict court a dedimus potestatum, or commission, to be directed to Thomas L. Carpenter, esq., of No. 47 Wall street, in the city of
389 New York and the State of New York, as commissioner, to take the deposition of Augustus Kountze, of said city and State, to be used in evidence on the trial of the above-entitled cause now depending and undetermined in the district court of said county, on the common-law side thereof; and that a copy of the interrogatories hereto attached will be appended to dedimus potestatum, or commission, to be propounded to said witness on the part and in behalf of the plaintiff, and you can file cross-interrogatories and join in said commission if you see fit.

H. M. & W. TELLER,
W. R. GORSLINE,
Att'ys for Pl'ff.
E. WAKELY,
G. B. REED,
HUGH BUTLER,
Att'ys for Def'ts.

Interrogatories to be propounded to Augustus Kountze, a witness to be produced and sworn on the part of the plaintiff, in a certain action now pending in the district court of Jefferson County, Colorado, wherein the Rocky Mountain National Bank, of Central City, Colorado,
390 and the Union Gold-Mining Company of Colorado is defendant.

Interrogatory first. What is your name, age, occupation, and place of residence?

Interrogatory second. Are you acquainted with the plaintiff and defendant in this suit; if so, how long have you known them respectively?

Interrogatory third. What relation, if any, did you bear to the plaintiff in the year 1869?

Interrogatory fourth. Were you in any way connected with the plaintiff in the spring of 1869; if yea, in what capacity?

Interrogatory fifth. Were you, or were you not, an officer of the plaintiff at any time during the year 1869?

391 Interrogatory sixth. Were you, or were you not, at any time during the year 1869 notified by the defendant through its officers, or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff?

Interrogatory seventh. Did you, or did you not, know in 1869 that the plaintiff claimed that the defendant was indebted to the plaintiff for money loaned to defendant by plaintiff? If you answer that you knew in 1869 that the plaintiff was making such claim on the defendant, state fully all you know about it and your means of information, when you first knew of such claim, and from whom.

Interrogatory eighth. Do you know who was president of defendant in the fall of 1868 and during the year of 1869? If so, state who was president and your means of information.

Interrogatory ninth. Were you acquainted with any of the offi-
392 cers of defendant in 1869; if so, which ones?

Interrogatory tenth. Have you ever had any conversation with any of the officers of defendant concerning the claim of plaintiff against the defendant; if so, where was it and what was said by such officer of defendant about the claim of plaintiff against defendant?

Interrogatory eleventh. Did you ever have any conversation with Theodore H. Becker concerning the claim of the plaintiff against the de-

fendant; if so, when was it, and what was said by said Becker concerning said claim of plaintiff?

Interrogatory twelfth. Do you know any other matters or thing tending to the advantage of the plaintiff touching the matter in controversy? If so, state the same as fully as if you had been especially interrogated concerning the same.

393 We do hereby acknowledge service on us of a copy of the annexed notice and interrogatories, and do consent that the dedimus potestatum issue on the 30th day of September, 1872, but reserve all other objections.

Central City, Sept. 28th, 1872.

E. WAKELY & G. B. REED,
Def'ts Attorneys.

Cross interrogatories to be propounded on part of the defendants to Augustus Kountze, a witness to be produced and sworn on part of the plaintiff in a certain action now pending in the district court of Jefferson County, Colorado, wherein the Rocky Mountain National Bank of Central City, Colorado, is the plaintiff, and the Union Gold-Mining Company of Colorado is defendant.

Cross-interrogatory first. If in answer to fifth direct interrogatory you state that you was an officer of plaintiff at any time during the year 1869, state what office you held in plaintiff corporation and who
394 were the other officers of plaintiff at that time.

Cross-interrogatory second. Do you know Herman Kountze? State if you know what, if any, official position he held in plaintiff corporation during the year 1869.

Cross-interrogatory third. If in answer to tenth direct interrogatory you state that you ever had any conversation with any officer of the defendant concerning the claim of the plaintiff against the defendant, state particularly when such conversation or conversations occur'ed, the date of each, and who were present at each of the same.

Cross-interrogatory fourth. If in answer to sixth direct interrogatory you answer that you were at no time during the year 1869 notified by the defendant that the defendant refused to recognize the indebtedness from the defendant to plaintiff, state whether or not, at any
395 time in said year, Herman Kountze was not so notified by the defendant in your presence; and, if yea, by whom he was so notified, and how notified.

Cross-interrogatory fifth. If in answer to eleventh direct interrogatory you state that you have had conversation with Theodore H. Becker concerning the claim of plaintiff against the defendant, state when those conversations took place, where they took place, and who was present at each of such conversations. If in answer you state that you never had any conversation or conversations with Theodore H. Becker concerning the claim of the plaintiff against the defendant, state whether you were present at any conversation or conversations between Theodore H. Becker & Herman Kountze in regard to said claim, on or about the first of April, 1869, at your office in the city of New York, in which conversation Theodore H. Becker informed said Herman Kountze that a meeting of the stockholders of the defendant corporation
396 would be held on the first Monday of April, 1869, at which the claim of the plaintiff against the defendant would be considered, and the said Herman Kountze was invited by the said Becker to attend such meeting.

Cross-interrogatory sixth. If in answer to the sixth direct interrogatory you answer that you were not at any time during the year 1869 notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff, state whether you were not present at your office in the city of New York, on or about the first Tuesday of April, 1869, and heard a conversation between Theodore H. Becker and Herman Kountze, in which conversation Becker informed Kountze that the stockholders of defendant had had a meeting, at which the claim of the plaintiff had been considered, and that the stockholders refused to recognize
397 such claim or have anything to do with it.

Cross-interrogatory seventh. State the substance of any and all conversations had in your presence between Theodore H. Becker & Herman Kountze relative to the claim of the plaintiff against the defendant, and the refusal of the defendant to recognize the validity of such claim and the time when such conversations occurred, where they occurred, and who was present at each of said conversations.

E. WAKELY,
HUGH BUTLER,
G. B. REED,
Att'ys for Def'ts.

The deposition of Augustus Kountze, of the city of New York, in the county and State of New York, a*nd* witness of lawful age, produced, sworn, and examined upon his corporal oath on the 10th day of October, A. D. 1872, at No. 19 West 21st street in the city of New York, in the county and State of New York aforesaid, by me, Thomas
398 L. Carpenter, a commissioner duly appointed by a dedimus potestat*um* issued out of the clerk's office of the district court of Jefferson County, in the Territory of Colorado, bearing teste in the name of John R. Cleaveland, esq., clerk of the said district court, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Augustus Kountze, a witness in a certain suit and matter in controversy now pending and undetermined in the said district court, where the Rocky Mountain National Bank of Central City is plaintiff and the Union Gold-Mining Company of Colorado is defendant, in behalf of the said plaintiff, as well upon the cross-interrogatories of the defendant as upon the interrogatories of the plaintiff, which were attached to or included with the said commission, and upon none others.

The said AUGUSTUS KOUNTZE, being first duly sworn as a wit-
399 ness in the said cause previous to the commencement of his examination to testify the truth as well upon the part of the plaintiff as the defendant in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name, age, occupation, and place of residence?

Answer to interrogatory first. Augustus Kountze; temporary residence, New York City; permanent residence, Omaha, Nebraska; age, forty-six years; occupation, banker.

Interrogatory second. Are you acquainted with the plaintiff and defendant in this suit; if so, how long have you known them respectively?

Answer to interrogatory second. I have known the plaintiff ever since its organization, and have known the defendant since 1869.

400 Interrogatory third. What relation, if any, did you bear to the plaintiff in the year 1869?

Answer to interrogatory third. I was stockholder of the plaintiff in 1869.

Interrogatory fourth. Were you in any way connected with the plaintiff in the spring of 1869? If yea, in what capacity?

Answer to interrogatory fourth. In the capicity of stockholder.

Interrogatory fifth. Were you or were you not an officer of the plaintiff at any time during the year 1869?

Answer to interrogatory fifth. I think I was not an officer of the plaintiff any time during the year 1869.

401 Interrogatory sixth. Were you or were you not at any time during the year 1869 notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff?

Answer to interrogatory sixth. I was never so notified, but through the then president of the defendant, Theodore H. Becker, I was informed of the correctness of plaintiff's claim against the defendant, and the desire on his part of making an early discharge of the said plaintiff's claim by providing funds to pay the same in full, and to that end he would call the stockholders of the defendant together with the view of making an assessment on the stockholders for the purpose of liquidating said indebtedness; that the claim was just and right and ought to be speedily paid.

402 Interrogatory seventh. Did you or did you not know in 1869 that the plaintiff claimed that the defendant was indebted to the plaintiff for money loaned to the defendant by plaintiff? If you answer that you knew in 1869 that the plaintiff was making such claim on the defendant, state fully all you know about it, and your means of information when you first knew of such claim, and from whom.

Answer to interrogatory seventh. I knew in 1869 of such claim. I knew about it from statements that were furnished me from time to time by Joseph H. Goodspeed, cashier of plaintiff, and also by direct information from him conveyed personally, and also knew of it through my brothers, Charles and Herman Kountze, and also from admissions of Theodore H. Becker, the then president of the defendant.

403 Interrogatory eighth. Do you know who was president of the defendant in the fall of 1868, and during the year 1869? If so, state who was president and your means of information.

Answer to interrogatory eighth. Theodore H. Becker was president during that time. He informed me himself he was president.

Interrogatory ninth. Were you acquainted with any of the officers of defendant in 1869; if so, which ones?

Answer to interrogatory ninth. I was acquainted with Theodore H. Becker, president of defendant, only.

Interrogatory tenth. Have you ever had any conversation with any of the officers of defendant concerning claim of plaintiff against defendant; if so, when was it, and what officer was it, and what was said by such officer of defendant about the claim of plaintiff against defendant?

404 Answer to interrogatory tenth. I have had conversations on several different occasions with Theodore H. Becker, the then president of the defendant, at the office of Luther Kountze, then located at 52 Wall street, New York. In all my interviews with said Becker, he always stated that the claim of the plaintiff against the defendant was right, just, and correct, and should be paid in full, never intimating anything in the least to the contrary.

Interrogatory eleventh. Did you ever have any conversation with Theodore H. Becker concerning the claim of the plaintiff against the defendant; if so, when was it, and what was said by said Becker concerning said claim of plaintiff?

Answer to interrogatory eleventh. I did have conversation with Theodore H. Becker concerning the claim in question, when he expressed great regrets of his inability to immediately discharge the said claim by paying the money for the same to said plaintiff, but that the
405 plaintiff should have his best endeavors to see the stockholders of the defendant and making early provisions for the liquidation of plaintiff's claim against the defendant.

Interrogatory twelfth. Do you know of any matter or thing tending to the advantage of the plaintiff, touching the matter in controversy? If so state the same as fully as if especially interrogated concerning the same.

Answer to interrogatory twelfth. I asked said Becker to advance the money to pay said claim of plaintiff against the defendant. He replied that in the event that he did so, he might be delayed in getting it back from the defendant, but he assured and re-assured me that he would use his utmost endeavors to place the plaintiff in possession of all the funds advanced to the defendant by plaintiff.

Cross-interrogatory first. If in answer to fifth direct interroga-
406 tory you state that you was an officer of plaintiff at any time during the year 1869, state what office you held in plaintiff corporation and who were the officers of plaintiff at that time.

Answer to cross-interrogatory first. My brother, Herman Kountze, was president, Joseph H. Goodspeed was cashier, and F. H. Potter was assistant cashier.

Cross-interrogatory second. Do you know Herman Kountze? If yea, state, if you , what if any official position he held in plaintiff corporation during the year 1869?

Answer to cross-interrogatory second. I do. He was president of the plaintiff in 1869.

Cross-interrogatory third. If in answer to the tenth direct interrogatory you state that you ever had any conversation with any officer of the defendant concerning the claim of the plaintiff against the
407 defendant, state particularly when such conversation or conversations occurred, the date of each, and who were present at each of them.

Answer to cross-interrogatory third. Said conversations were had early in the year 1869, at different times, at the office of Luther Kountze, No. 52 Wall street, New York. I cannot give the exact date of such conversations. At such conversations were present Theodore H. Becker, Luther Kountze, and myself.

Cross-interrogatory fourth. If in answer to the sixth direct interrogatory you answer that you were at no time during the year 1869 notified by the defendant that the defendant refused to recognize the indebtedness from the defendant to the plaintiff, state whether or not at any time in said year Herman Kountze was not so notified by the defendant in your presence; and, if yea, by whom notified.

408 Answer to cross-interrogatory fourth. I never met Theodore H. Becker simultaneously with Herman Kountze, and said Herman Kountze was never so notified at any time in my presence, nor did I ever have any knowledge of any such notification.

Cross-interrogatory fifth. If in answer to eleventh direct interrogatory you state that you have had conversations with Theodore H. Becker, concerning the claim of the plaintiff against the defendant, state when

those conversations took place, where they took place, and who was present at each of such conversation'. If in answer you state that you never had any such con*con*versation or conversations with Theodore H. Becker concerning the claim of the plaintiff against the defendant, state whether you ever were present at any conversation or conversations between Theodore H. Becker & Herman Kountze in regard to the said claim on or about the first of April, 1869, at your office in the city of New York, in which conversation Becker informed said Her-
409 man Kountze that a meeting of the stockholders of the defendant corporation would be held on the first Tuesday of April, 1869, at which the claim of the plaintiff against the defendant would be considered, and the said Herman Kountze was invited by the said Becker to attend such meeting.

Answer to cross-interrogatory fifth. Such conversations took place in the early part of the year 1869, at the office of Luther Kountze, No. 52 Wall street. Theodore H. Becker, and I think Luther Kountze, was present at all of such conversations. Herman Kountze was not present at any of the conversations alluded to.

Cross-interrogatory sixth. If in answer to the sixth direct interrogatory you answer that you were not at any time during the year 1869 notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff, state whether you were not present at your office in the
410 city of New York on or about the first Tuesday in April, 1869, and heard a conversation between Theodore H. Becker & Herman Kountze, in which conversation Becker informed Kountze that the stockholders of the defendant had a meeting at which the claim of the plaintiff had been considered, and that the stockholders refused to recognize such claim or have anything to do with it.

Answer to cross interrogatory sixth. I was not present on the occasion of any conversation between Theodore H. Becker and Herman Kountze at the date referred to or at any other time.

Cross-interrogatory seventh. State the substance of any and all conversations had in your presence between Theodore H. Becker & Herman Kountze relative to the claim of plaintiff against the defendant, and the refusal of the defendant to recognize the validity of such claim, and the time when such conversations occurred, and who was present at each of said conversations.

411 Answer to cross-interrogatory seventh. I was never present at any conversation claimed to be had between Theodore H. Becker and Herman Kountze.

AUGUSTUS KOUNTZE.

Subscribed and sworn to before me this 10th day of October, A. D. 1872.

THOMAS L. CARPENTER,
Commissioner.

I, Thomas L. Carpenter, of the city of New York, in the county and State of New York, a commissioner duly appointed to take the deposition of the said Augustus Kountze, a witness, whose name is subscribed to the foregoing deposition, do hereby certify that, previous to the commencement of the examination of the said Augustus Kountze as a witness in the said suit between the said The Rocky Mountain National Bank of Central City as plaintiff and the Union Gold-Mining Company of Colorado as defendant, he was duly sworn by me to testify the
412 truth in relation to the matters in controversy between the said parties so far as he should be interrogated concerning the

same; that the said deposition and reduced to writing, by me, at No. 19 West 21st street, New York City, in the county and State of New York, aforesaid, on the 10th day of October, A. D. 1872, and that after said deposition was taken by me, as aforesaid, the interrogatories and answers thereto as written down were read over to the said witness, and that thereupon the same was signed and sworn to by the said deponent at the place and on the day and year last aforesaid.

New York, October 10th, 1872.

THOMAS L. CARPENTER, COMMISSIONER.

THOMAS L. CARPENTER,
Commissioner.

Fees, 12.00, paid by plaintiff.

T. L. C.

413 TERRITORY OF COLORADO,
County of Jefferson, ss:

The people of the Territory of Colorado to Thomas L. Carpenter, esq., of No. 47 Wall street, in the city of New York, in the State of New York, greeting:

Whereas it has been represented to us that Luther Kountze, of said city and State, is a material witness in a certain cause now pending in our district court for the second judicial district of Colorado Territory, in and for the county of Jefferson, wherein the Rocky Mountain National Bank of Central City is plaintiff and the Union Gold-Mining Company of Colorado defendant, and that the said witness resides at the said city and State of New York, without the said Territory of Colorado, and that his personal attendance cannot be procured at the trial of said cause:

Now know ye that we, in confidence of your prudence and fidel-
414 ity, have appointed, and by these presents do appoint, you commissioner to examine the said witness, and do therefore authorize and require you to cause the said witness to come before you, at such time and place as you may therefore designate and appoint, and diligently to examine the said witness, on the oath or affirmation of the said witness by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories & cross-interrogatories inclosed with and attached to these presents, both on part of the said plaintiff and the said defendant, and none others, and the same when thus taken, together with this commission and the said interrogatories, to certify into our said district court with the least possible delay.

Witness John R. Cleaveland, clerk of our said district court, and the seal thereof, at Golden City, in said county of Jefferson and Territory aforesaid, this thirtieth day of September, A. D. 1872.

[SEAL.] JOHN R. CLEAVELAND,
Clerk,
By CHESTER C. CARPENTER,
Deputy.

415 In the district court, 2d judicial district in & for said county, to the November term, A. D. 1872.

TERRITORY OF COLORADO,
County of Jefferson, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY
vs.
THE UNION GOLD-MINING COMPANY OF COLORADO.

The above-named defendants are hereby notified that, on the 30th day

of September, A. D. 1872, we will sue out of the clerk's office of the district court of said county a dedimus potestatum, or commission, to be directed to Thomas L. Carpenter, esq., of No. 47 Wall street, in the city of New York, in the State of New York, as commissioner, to take the deposition of Luther Kountze of said city and State, to be used in evidence on the trial of the above-entitled cause now depending and undetermined in the district court of said county, on the common-law side thereof, and that a copy of the interrogatories hereto at-
416 tached will be appended to said dedimus potestatum, or commission, to be propounded to said witness on the part and in behalf of the plaintiff, and you can file cross-interrogatories and join in said commission if you see fit.

H. M. & W. TELLER,
W. R. GORSLINE,
Att'ys for Plaintiff.

To—
E. WAKELY,
G. B. REED,
HUGH BUTLER,
Defendant's Attorneys.

Interrogatories to be propounded to Luther Kountze, a witness to be produced and sworn on the part of the plaintiff in a certain action now pending in the district court of Jefferson County, Colorado, wherein the Rocky Mountain National Bank of Central City, Colorado, is the plaintiff, and the Union Gold-Mining Company of Colorado is defendant.

Interrogatory first. What is your name, age, occupation, and place of residence?

417 Interrogatory second. Are you acquainted with the plaintiff and defendant in this suit? If so, how long have you known them respectively?

Interrogatory third. What relation, if any, did you bear to the plaintiff in the year 1869?

Interrogatory fourth. Were you, in any way, connected with the plaintiff in the spring of 1869? If yea, in what capacity?

Interrogatory fifth. Were you, or were you not, an officer of the plaintiff at any time during the year 1869?

Interrogatory sixth. Were you, or were you not, at any time during the year 1869, notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff?

418 Interrogatory seventh. Did you, or did you not, know, in 1869, that the plaintiff claimed that the defendant was indebted to the plaintiff for money loaned to the defen't by plaintiff? If you answer that you knew, in 1869, that the plaintiff was making such claim on the defendant, state fully all you know about , and your means of information; when you first knew of such claim, and from whom.

Interrogatory eighth. Do you know who was president of defendant in the fall of 1868 and during the year 1869? If so, state who was president, and your means of information.

Interrogatory ninth. Were you acquainted with any of the officers of defendant in 1869? If so, which ones?

Interrogatory tenth. Have you ever had any conversation with
419 any of the officers of defendant concerning the claim of plaintiff

against defendant? If so, where was it, and what officer was it, & what was said by such officer of defendant about the claim of plaintiff against defendant?

Interrogatory eleventh. Did you ever have any conversation with Theodore H. Becker concerning the claim of the plaintiff against the defendant? If so, when was it, and what was said by said Becker concerning said claim of plaintiff?

Interrogatory twelfth. Do you know of any other matter or thing tending to the advantage of the plaintiff touching the matter in controversy? If so, state the same as fully as if especially interrogated concerning the same.

We do hereby acknowledge service on us of a copy of the annexed notice and interrogatories, and do consent that the dedimus potestatum may issue on Sept. 31st, 1872, but reserve all other objections.

420 Central City, Sept. 28th, 1872.

E. WAKELY & G. B. REED,
Defen't's Attorneys.

Cross-interrogatories to be propounded, on the part of defendant, to Luther Kountze, a witness to be produced and sworn on the plaintiff in a certain action now pending in the district court of Jefferson County, Colorado, wherein the Rocky Mountain National Bank of Central City, Colorado, is the plaintiff, and the Union Gold-Mining Company of Colorado is defendant.

Cross-interrogatory first. If in answer to fifth direct interrogatory you state that you was an officer of plaintiff at any time during the year 1869, state what office you held in plaintiff corporation, and who were the other officers of plaintiff at that time.

Cross-interrogatory second. Do you know Herman Kountze? If yea, state if you what, if any, official position he held in plaintiff
421 corporation during the year 1869.

Cross-interrogatory third. If in answer to tenth direct interrogatories you state that you ever had any conversation with any officer of the defendant concerning the claim of the plaintiff against the defendant, state particularly where such conversation or conversations occurred, the date of each, and who were present at each of same.

Cross-interrogatory fourth. If in answer to the sixth direct interrogatory you answer that you were at no time during the year 1869 notified by the defendant that the defendant refused to recognize the indebtedness from the defendant to the plaintiff, state whether or not at any time in said year Herman Kountze was not so notified by the defendant in your presence; and, if yea, by whom he was so notified, and how notified.

422 Cross-interrogatory fifth. If in answer to eleventh direct interrogatory you state that you have had conversation with Theodore H. Becker concerning the claim of the plaintiff against the defendant, state when those conversations occurred, where they took place, and who was present at each of such conversations. If in answer you state that you never had any conversation or conversations with Theodore H. Becker concerning the claim of the plaintiff against the defendant, state whether you were present at any conversation or conversations between Theodore H. Becker and Herman Kountze in regard to said claim on or about the first day of April, 1869, at your office in the city of New York, in which conversation Becker informed said Herman Kountze that a meeting of the stockholders of the defendant corpora-

tion would be held on the first Monday of April, 1869, at which the claim of the plaintiff against the defendant would be considered, and the said Herman Kountze was invited by the said Becker to attend such meeting.

423 Cross-interrogatory sixth. If in answer to sixth direct interrogatorey you answer that you were not at any time during the year 1869 notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff, state whether you were not present at your office in the city of New York, on or about the first Tuesday of April, 1869, and heard a conversation between Theodore H. Becker & Herman Kountze, in which conversation Becker informed Kountze that the stockholders of the defendant had had a meeting, at which the claim of the plaintiff had been considered, and that the stockholders refused to recognize such claim or have anything to do with it.

Cross-interrogatory seventh. State the substance of any and all conversations had in your presence between Theodore H. Becker and Herman Kountze relative to the claim of the plaintiff against the

424 defendant and the refusal of the defendant to recognize the validity of such claim, and the time when such conversation occurred, where they occurred, and who were present at each of said conversations.

E. WAKELY,
HUGH BUTLER,
G. B. REED,
Att'ys for Defen'ts.

The deposition of Luther Kountze, of the city of New York, in the county and State of New York, as witness of lawful age, produced, sworn, and examined upon his corporal oath, on the 10th day of October, A. D. 1872, at No. 12 Wall street, in the city of New York, in the county and State of New York aforesaid, by one Thomas L. Carpenter, a commissioner duly appointed by a dedimus potestatum issued out of the clerk's office of the district court of Jefferson County, in the Territory of Colorado, bearing teste in the name of John R.

425 Cleaveland, esq., clerk of the said district court, and the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said Luther Kountze, a witness in a certain suit and matter in controversy now pending and undetermined in the said district court, wherein the Rocky Mountain National Bank of Central City is plaintiff and the Union Gold-Mining Company of Colorado is defendant, in behalf of the said plaintiff, as well upon the cross-interrogatories of the defendant as upon the interrogatories of the plaintiff, which were attached to or included with the said commission, and upon none others.

The said Luther Kountze, being first duly sworn as a witness in the said cause previous to the commencement of his examination to testify the truth, as well on the part of the plaintiff as the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

426 Interrogatory first. What is your name, age, and occupation, and place of residence?

Answer to interrogatory first. Luther Kountze; thirty years; banker; New York City.

Interrogatory second. Are you acquainted with the plaintiff and defendant in this suit? If so, how long have you known them respectively?

Answer to interrogatory second. I have been acquainted with the plaintiff ever since its organization, for about six years. I have known the defendant for four or five years.

Interrogatory third. What relation, if any, did you bear to the plaintiff in the year 1869?

Answer to interrogatory third. In the year 1869 I was a stockholder of the plaintiff.

427 Interrogatory fourth. Were you in any way connected with the plaintiff in the year 1869? If yea, in what capacity?

Answer to interrogatory fourth. In the spring of 1869 I was a stockholder of the plaintiff.

Interrogatory fifth. Were you or were you not an officer of the plaintiff at any time during the year 1869?

Answer to interrogatory fifth. I was not.

Interrogatory sixth. Were you or were you not at any time during the year 1869 notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff?

Answer to interrogatory sixth. I was not so notified.

428 Interrogatory seventh. Did you or did you not know in 1869 that the plaintiff claimed that the defendant was indebted to the plaintiff for money loaned to defendant by plaintiff? If you answer that you knew in 1869 that the plaintiff was making such claim on the defendant, state fully all you know about it, and your means of information; when you first knew of such claim, and from whom.

Answer to interrogatory seventh. I did know that 1869 the plaintiff claimed that the defendant was indebted to plaintiff for money loaned to defendant. My means of information was from statements rendered by the plaintiff from time to time, and also from personal conversation had with Joseph H. Goodspeed, the then cashier of the plaintiff.

Interrogatory eighth. Do you know who was president of defendant in the fall of 1868 and during the year 1869? If so, state who

429 was president, and your means of information.

Answer to interrogatory eighth. Theodore H. Becker was president of the defendant during that time. M'r Becker informed me himself he was president.

Interrogatory ninth. Were you acquainted with any of the officers of defendant in 1869? If so, which ones?

Answer to interrogatory ninth. I was acquainted with Theodore H. Becker, the president.

Interrogatory tenth. Have you ever had any conversation with any of the officers of defendant concerning the claim of plaintiff against defendant? If so, when was it, and what was said by such officer of defendant about the claim of plaintiff against the defendant?

Answer to interrogatory tenth. I had conversation with Theo-

430 dore H. Becker, the president of the defendant, concerning the claim of plaintiff against the defendant in 1869. M'r Becker called at my office, No. 52 Wall, New York, to see me concerning the claim, and to explain that he could not immediately pay it; that he would see it was paid as soon as possible, and with a view to that end he would see the stockholders of the defendant to obtain money from them for the purpose of liquidating said claim of plaintiff against the defendant.

Interrogatory eleventh. Did you ever have any conversation with Theodore H. Becker concerning the claim of the plaintiff against the

defendant? If so, when was it, and what was said by said Becker concerning said claim of plaintiff?

Answer to interrogatory eleventh. I did have conversation with Theodore H. Becker, the president of the defendant, concerning the claim of the plaintiff against the defendant in 1869. M'r Becker called at my office, No. 52 Wall street, New York, to see me concerning the
431 claim, and he then and there explained to me that he could not immediately pay it; that he would see it was paid as soon as possible, and with a view to that end he would see the stockholders of the defendant and obtain money from them for the purpose of paying said claim.

Interrogatory twelfth. Do you know any other matter or thing tending to the advantage of the plaintiff touching the matter in controversy? If so, state the same as fully as if especially interrogated concerning the same.

Answer to interrogatory twelfth. I do not now recollect of anything further that would tend to the benefit or advantage of the plaintiff.

Cross-interrogatory first. If in answer to fifth direct interrogatory you state that you was an officer of plaintiff at any time during the year 1869, state what office you held in plaintiff corporation, and who were the other officers of plaintiff at that time.

432 Answer to cross-interrogatory first. I was stockholder of plaintiff in 1869. Herman Kountze was president, Joseph H. Goodspeed cashier, and T. H. Potter was assistant cashier.

Cross-interrogatory second. Do you know Herman Kountze? If yea, state if you know what, if any, official position he held in plaintiff corporation during the year 1869.

Answer to cross-interrogatory second. I do. In 1869 Herman Kountze was president of plaintiff corporation.

Cross-interrogatory third. If in answer to tenth direct interrogatory you state that you ever had any conversations with any officer of the defendant concerning the claim of the plaintiff against the defendant, state particularly when such conversation or conversations occurred, the date of each, and who was present at each of same.

Answer to cross-interrogatory third. Such conversations oc-
433 curred at my office, No. 52 Wall street, New York City, during the early part of the year 1869. I cannot state the exact date of each. M'r Augustus Kountze was present at several of such conversations.

Cross-interrogatory fourth. If in answer to the sixth direct interrogatory you answer that you were at no time during the year 1869 notified by the defendant that the defendant refused to recognize the indebtedness from the defendant to plaintiff, state whether or not at any time in said year Herman Kountze was not so notified by the defendant in your presence, and, if yea, by whom he was so notified, and how notified.

Answer to cross-interrogatory fourth. He was never so notified in my presence, as I never was present at any conversation had between Herman Kountze and Theodore H. Becker, or any person representing the defendant.

Cross-interrogatory fifth. If in answer eleventh direct inter-
434 rogatory you state that you have had conversations with Theodore H. Becker concerning the claim of the plaintiff against the defendant, state when those conversations took place and who was present at each of such conversations. If in answer you state that you never had any conversation or conversations with Theodore H. Becker

concerning the claim of the plaintiff against the defendant, state whether you were present at any conversation or conversations between Theodore H. Becker and Herman Kountze in regard to said claim, on or about the first of April, 1869, at your office in the city of New York, in which conversation Becker informed said Herman Kountze that a meeting of the stockholders of the defendant corporation would be held on the first Tuesday of April, 1869, at which the claim of the plaintiff against the defendant would be considered, and the said Herman Kountze was invited by the said Becker to attend such meeting.

435 Answer to cross-interrogatory fifth. The conversations took place in the early part of the year 1869, at my office, No. 52 Wall street, New York. Augustus Kountze was present.

Cross-interrogatory sixth. If in answer to the sixth direct interrogatory you answer that you were not at any time during the year 1869 notified by the defendant, through its officers or otherwise, that the defendant refused to recognize an indebtedness from the defendant to the plaintiff, state whether you were not present at your office in the city of New York, on or about the first Tuesday of April, 1869, and heard a conversation between Theodore H. Becker & Herman Kountze, in which conversation Becker informed Kountze that the stockholders of defendant had had a meeting, at which the claim of the plaintiff had been considered, and that the stockholders refused to recognize such claim, or have anything to do with it.

436 Answer to cross-interrogatory sixth. I was not present at any conversation between Theodore H. Becker and Herman Kountze, on or about the first Tuesday of April, 1869, or at any other time.

Cross-interrogatory seventh. State the substance of any and all conversations had in your presence between Theodore H. Becker & Herman Kountze relative to the claim of the plaintiff against the defendant, and the refusal of the defendant to recognize the validity of such claim, and the time when such conversations occurred, where they occurred, and who were present at each of said conversations.

Answer to cross-interrogatory seventh. I never was present at any conversation between Theodore H. Becker & Herman Kountze.

LUTHER KOUNTZE.

437 Subscribed and sworn to before me this 10th day of October, 1872.

THOMAS L. CARPENTER,
Commissioner.

I, Thomas L. Carpenter, of the city of New York, and the county and State of New York, a commissioner duly appointed to take the deposition of the said Luther Kountze, a witness whose name is subscribed to the foregoing deposition, do hereby certify that, previous to the commencement of the examination of the said Luther Kountze as a witness in the said suit between the said The Rocky Mountain National Bank of Central City as plaintiff and the Union Gold-Mining Company of Colorado as defendant, he was duly sworn by me to testify the truth in relation to the matters in controversy between the said parties, so far as he should be interrogated concerning the same; that the said deposition was taken by me and reduced to writing by me, at No. 12 Wall
438 street, New York City, in the county and State of New York aforesaid, on the 10th day of October, A. D. 1872, and that after said deposition was taken by me as aforesaid, the interrogatories and answers thereto, as written down, were read over to the said witness, and that

thereupon the same was signed and sworn to by the said deponent at the place and on the day and year last aforesaid.

New York, October 10, 1872.

{ THOMAS L. CARPENTER, COMMISSIONER. } THOMAS L. CARPENTER, *Commissioner.*

Fees, $12; paid by pl'ff.

T. L. C.

Here the plaintiff rested its case.

And the defendant, to maintain the issues on its part, gave in evidence to the jury as follows:

439 First, the several depositions of Frederick A. Potts, Samuel Bonell, & Henry Provost, as follows:

TERRITORY OF COLORADO,
County of Boulder, ss:

The people of the Territory of Colorado to Charles E. Nettleton, New York City, New York, greeting.

Whereas it has been represented to us that Frederick A. Potts, of New York City, New York, is a material witness in a certain cause now depending in our district court for the second judicial district of Colorado Territory, in and for the county of Boulder, wherein the Rocky Mountain National Bank of Central City is plaintiff and the Union Gold-Mining Company is defendant, and that the said witness resides at New York City, New York, aforesaid, without the said Territory of Colorado, and that his personal attendance cannot be procured at the trial of the said cause: Now know ye, that we, in confidence
440 of your prudence and fidelity, have appointed, and by these presents do appoint, you commissioner to examine the said witness and do therefore authorize and require you to cause the said witness to come before you at such time and place as you may therefor designate & appoint, and diligently to examine the said witness on the oath or affirmation by you first duly in that behalf administered, and faithfully to take the deposition of the said witness upon all interrogatories and cross-interrogatories inclosed with or attached to these presents, both on the part of the said plaintiff and the said defendant, and none others; and the same when thus taken, together with this commission and the said interrogatories, to certify into our said district court with the least possible delay.

Witness Curtis G. Hathaway, clerk of said district court, and the seal thereof, at Central City, in said county and Territory, this twentieth day of December, A. D. 1870.

[SEAL.] CURTIS G. HATHAWAY, *Clerk.*

441 In district court of Boulder County, aforesaid.

TERRITORY OF COLORADO,
County of Boulder, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY *vs.* UNION GOLD-MINING COMPANY. } To Jannary term, A. D. 1871.

To Mess. Johnson & Teller, plaintiff's attorneys:

You will please take notice that, on 20th day of December, A. D. 1870, we will appear at the clerk's office of the district of said county

of Boulder, at the hour of nine o'clock a. m. of said day, for the purpose of suing out a commission or dedimus potestat*um* directed to Charles Nettleton, esq., of New York City, as commissioner, authorizing and requiring him to take the deposition of Frederick A. Potts, a witness upon the part of the defendant, upon the interrogatories hereto annexed, said deposition to be used upon the trial of the above-entitled cause,
442 when and where you may appear and file cross-interrogatories if you so desire.

Central City, Dec., 1870.

HUGH BUTLER,
E. WAKELY,
Att'ys for Def't.

Interrogatories to be propounded to Frederick A. Potts, a witness to be produced, sworn, and examined under and by virtue of the annexed commission or dedimus potestat*um*.

Int. 1st. What is your name, age, occupation, and place of residence?

Int. 2nd. Do you know the parties to this suit, or either of them; if so, how long have you known them, or either of them, respectively?

Int. 3d. Did you ever hold any office or position in the defendant? If so, please state fully.

443 Int. 4th. Do you know George K. Sabin? If so, please state when and where you knew him.

Int. 5th. Do you know whether George K. Sabin was appointed agent or superintendent of the defendant? If you state you do know, please state when he was appointed, for how long, how long he acted under said appointment, and whether he was appointed more than once.

Int. 6th. If in answer to the preceeding interrogatory you state that said Sabin was appointed such agent or superintendent, state if you know what were his powers and duties.

Int. 7th. Do you know whether Sabin was in New York City in the fall of the year 1866, and whether an arrangement was then made between him and the defendant by which he was to take charge of
444 and work defendant's property? If you answer that you do, please state fully all you know about it, and what were the terms and conditions of the same.

Int. 8th. What position or office, if any, did you hold in the defendant at that time?

Int. 9th. If in answer to the 7th interrogatory you state that some arrangement was then made, state if you know who made said arrangement on behalf of the defendant.

Int. 10th. Do you know whether Sabin was authorized or allowed to draw drafts against the defendant, or to contract debts against the defendant, or to borrow money in its name, or to carry on its business? If so, state fully whether he was so authorized or not.

445 Int. 11th. State if you know whether Sabin was to send any pay-rolls or to make any remittance of profits to the defendant in New York. State if you know what was to be done with the profits caused by working defendant's mine, if any were made.

Int. 12th. Do you know what salary or compensation Sabin was to receive for his services? If so, please state what it was, and whether or not the same was contingent upon the defendant's mine yielding a profit.

Int. 13th. State if you know whether Sabin was instructed by the defendant as to whether or not he was to continue or discontinue mining if the mine failed to pay expenses; if so, please state fully.

Int. 14th. Do you know whether John F. Topping was employed by the defendant? If so, please state when he was employed, for what purpose, at what salary, how long he continued in said employ,
446 whether he was paid for his services, and who paid him, if he was paid.

Int. 15th. Do you know of any other matter or thing in addition to what you have already stated that would tend to the benefit or advantage of the defendant? If so, please state the same fully and at large.

HUGH BUTLER,
E. WAKELY,
Def't's Att'ys.

We hereby accept service of a copy of the within this 10th day of December, 1870, & consent that the comms. sit of the clerk at Boulder.

JOHNSON & TELLER,
Att'ys for Pl'ffs.

(Endorsed:) G. M. Co. vs. R. M. N. Bank. Interrogatories. Hugh Butler & E. Wakely, def't's att'ys.

447 In district court, 2d judicial dist. To the Jan'y term, 1870.

TERRITORY OF COLORADO,
County of Boulder, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City
vs.
UNION GOLD-MINING COMPANY OF COLORADO.

Cross-interrogatories propounded to Frederick A. Potts, a witness to be examined on the part of defendant, to be attached to the dedimus potestatum.

If in answer to the fifth interrogatory of the defendant you say you th' George K. Sabin was appointed ag't or superintendent of the defendant, state how he was appointed, & if appointed more than once, how was he appointed each time.

If in answer to the 6th interrogatory you state that you knew what his powers were as such agent, state fully all you know about it.
448 If in answer to the 7th interrogatory you state that an arrang't was made between Sabin and the defendant, state all you know about your means of knowledge, and whether the arrangement was in writing or by parole.

If in answer to the 13th interrogatory you state you knew what Sabin's instructions were, state fully all you knew about it, whether such instructions were in writing or by parole, and how they were communicated to him.

If you say you knew Sabin was appointed ag't or superintendent of the defendant at any time, state fully how & by whom was he appointed.

JOHNSON & TELLER,
Att'ys for Pl'ff.

(Indorsed:) Interrogatories & cross interrogatories to be propounded to F. A. Potts, New York.

449 EXHIBIT A.

Exhibit A.—C. N., Commissioner.

OFFICE OF THE UNION GOLD-MINING CO. OF COLORADO,
No. 110 BROADWAY, ROOM No. 3.
New York, April 18th, 1865.

Col. GEO. K. SABIN:

DEAR SIR: M'r Becker has submitted to our board your telegram, stating that you will accept the superintendency of the Union Gold-Mining Company of Colorado, so, without further preliminaries, they instruct: 1st, on delivering of the enclosed letter to Col. Mallery, he will place you in full possession of the books, papers, office, and properties of the Union Company, with a copy of all accounts and liabilities against the company. 2d. Stop all work except sinking one shaft on the Bates Lode, but sink that shaft continuously & as speedily as possible, through ev'y cap until further advised. We expect you will soon find, if that
450 has not been done already, at least 50 feet of paying ore. 3d. We advise that all work, sinking shaft, &c., &c., shall be done by contract, at so much per foot, if possible, for our entire board are opposed to all check and pay rolls, and the contract-system is far more satisfactory. 4th. We desire a letter or report from you each week, stating what progress has been made in sinking said shaft, and what kind of ore it is passing through, width of crevice and width of iron, (if any;) also weekly expenses. 5th. Send us full monthly reports of all our business operations at the end of each month, and from time to time write us any suggestions you may deem necessary for the company to know in relation to their affairs.

Our M'r Becker contemplates being in Colorado in June, and will be authorized to make satisfactory arrangements with you as regards compensation, &c. He recommends you very highly to the company and says you will cheerfully obey all instructions of the company here,
451 conduct its affairs with the utmost economy, and see to our interests in Colorado promptly. In short, we are lead to expect that you will soon, if anybody can, make our mines pay.

Let us have your views of the character and prospects of these mines at the earliest day.

Hoping all may go satisfactory, I am, very truly, your ob't serv't,
EDWIN CROSWELL, *Pres't.*

EXHIBIT B.

Exhibit B.—C. N., Comm'r.

OFFICE OF THE UNION GOLD-MINING CO. OF COLORADO,
No. 110 BROADWAY, ROOM No. 3.
New York, September 29, 1865.

Col. GEO. K. SABIN:

DEAR SIR: We telegraph you to-day "if you can sell the ore to Lyon go on, if not stop everything immediately."

This conclusion is based on the suggestions in your letter of 6th by M'r Wright. The improvements you consider essential, (timbering the shaft, pump, and addition to the house or mill,) you estimate at
452 a total cost of $19,000. If you can get from M'r Lyon $20,000 for the 100 tons, at a cost of $5,000 for getting out the ore from the

upper shaft, as we learn you have exhausted all the ore heretofore taken out, you will realize $15,000, but if you can sell to Lyon and can get sufficient from the shaft in addition to the sale to Lyon, go on and put the mine in order if it can be done with economy and with the certainty that we do not make further inroads in the treasury.

We feel compelled to limit our operations to this extent, as we must not tread on the treasury beyond the expenditures of the month of Sept'r, especially if they exceed the remittances of gold.

It is not thought worth while to do anything with the Lyons process until it is fully demonstrated by the operations of his new furnaces and it proves to be a success.

When this shall be certain, and the cost not to' great it will be time to determine our actions on that subject. You gave the B. & B. Company the required notice of discontinuing the contract for their
453 mill the latter part of August, and M'r Wright informs that the Porter mill broke down, so that before this you are standing still. This certainly is better than to go forward with the prospect of running in debt.

Your remittance of the gold received 20th inst., 72 oz., yielded $1,696.86 currency. Yesterday 47 oz. were sold.

Very truly yours,

EDWIN CROSWELL.

The deposition of Frederick A. Potts, of the city, county, and State of New York, a witness of lawful age, produced, sworn, and examined on his corporal oath on the 28th day of December, 1870, at the office of Charles Nettleton, at 117 Broadway, in said city of New York, by me, Charles Nettleton, a commissioner duly appointed by a dedimus protestatum issued out of the clerk's office of the district court for the second judicial district of Colorado Territory, in and for the county of Boulder, bearing teste in the name of Curtis G. Hathaway, esq.,
454 clerk of the said district court, and the seal of said court affixed thereto, and to me directed as such commissioner for the examination of the said Frederick A. Potts, witness in a certain suit and matter in controversy now pending and undetermined in the said district court, where the Rocky Mountain National Bank, of Central City, is plaintiff, and the Union Gold-Mining Company is defendant, in behalf of the said defendant, as well upon the cross-interrogatories of the plaintiff as upon the interrogatories of the defendant, which were attached to or inclosed with the commission, and upon none others.

The said FREDERICK A. POTTS, being first duly sworn by me as a witness in the said cause previous to the commencement of his examination to testify the truth, as well on the part of the plaintiff as the defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name, age, occupation, and place of residence?

455 Answer. My name is Frederick A. Potts; thirty five years of age; wholesale coal merchant; my place of business is No. 110 Broadway, in the city of New York. My family reside at Pittsto'n, Huntestron County, New Jersey.

Interrogatory second. Do you know the parties of this suit or either of them; if so, how long have you known them, or either of them, respectively?

Answer 2. I know the defendant. I have no acquaintance with the plaintiff, and only know of the plaintiff by hearsay.

Interrogatory third. Did you ever hold any office or position in the defendant? If so, state fully.

Answer 3. I now hold the position of treasurer of the Union Gold-Mining Company, and have held that position ever since the organization of that company in 1863, I think it was.

456 Interrogatory fourth. Do you know George K. Sabin? If so, please state when and where you knew him.

4th answer. I do know George K. Sabin. I first met him in the early part of 1866, at the city of New York, on his coming to this city at that time; prior to his coming to New York City at the time he had held the position of superintendant of the company, and I, as treasurer, had held correspondence with him as such superintendent, and had not known him personally until he came to New York, as stated in this answer.

Interrogatory fifth. Do you know whether George K. Sabin was appointed agent or superintendent of the defendant? If you state you do know, please state when he was appointed, for how long, how long he acted under said appointment, and whether he was appointed more than once.

457 5th answer. He was appointed superintendent of the defendant company in April, 1865, for no definite of fixed time. He acted as such superintendent under the appointment until the 3d day of April, 1866, at which time he was at the office of the defendant in the city of New York, and then and there resigned his position of superintendent, and was paid in full for his services as superintendent of the defendant by me as treasurer of the company. He was not appointed superintendent of the defendant more than once or at any other time than that I have before stated.

Interrogatory sixth. If in answer to the preceeding interrogatory you state that said Sabin was appointed such agent or superintendent, state if you know what were his powers and duties.

Answer. As soon as convenient after M'r Sabin was appointed
458 superintendent, the president of the defendant wrote him a letter of instructions, a true and correct copy of which is hereto annexed, marked "Exhibit A." The original letter of which Exhibit A is a true copy was sent to M'r Sabin, at Central City, Colorado, at or about the day of its date; that letter gives the powers and duties of M'r Sabin as superintendent.

Interrogatory seventh. Do you know whether Sabin was in New York City in the fall of the year 1866, and whether an arrangement was then made between him and the defendant by which he was to take charge of and work defendant's property? If you answer that you do, please state fully all you know about it, and what were the terms and conditions of the same.

Answer 7th. M'r Sabin took charge of the defendant's property in Colorado the first of May, 1865, in pursuance of the instructions
459 contained in the letter to him, of which Exhibit **A** is a true copy.

M'r Sabin continued in charge of the defendant's property in Colorado from the time he so took charge, carrying out the instructions given him in Exhibit A, until the latter part of the month of September next following, when the defendant found from his reports that they were steadily loosing money and making large encroachments upon the capital of the company.

On the 26th day of September, 1865, the president of the defendant's company, after consultation with the directors of the company, wrote

M'r Sabin a letter, a true and correct copy of which is hereto annexed, marked "Exhibit B." The original letter of which Exhibit B is a true copy was sent to M'r Sabin by mail at or about the time of its date, directed to him at Central City, Colorado.

In accordance with the instructions contained in Exhibit B, all mining expenses of the defendant were then immediately stopped, and
460 all expenses of every kind were then stopped, except such as were absolutely necessary to preserve the property of the company. M'r Sabin staid in charge of the company until about the first of January, 1866, when he left for the Eastern States, and reported himself at the office of the company, in the city of New York, on the 3d of April following, when the defendant settled with him and paid him in full all his demands, and he then and there ceased all connection with the defendant as superintendent or in any capacity whatever.

M'r Sabin remained East during the following summer, and occasionally called at the defendant's office in this city as a friend simply.

During this summer M'r Sabin visited the gold fields of North Carolina with the intention of taking charge of some mines there, and invited me to join him in making an investment there, which I declined.

He also told me that he had spent some time in Troy and Ver-
461 mont, which was his native State. M'r Sabin failed to find any business which suited him during the summer of 1866, and some time in the latter part of the month of September of that year came unto the defendants, and while there stated to M'r Theodore H. Becker, who was at that time a director in the company, that he was satisfied that he could make the defendant's mine pay expenses by the sale or the manipulation of the second and third quality of the ores which might be extracted therefrom, and that the first quality ores which would be extracted might be accumulated for the benefit and profit of the defendant's company.

M'r Becker as a director of the company then made an arrangement with M'r Sabin on that basis, and upon the express condition that M'r Sabin was to pay all expenses from the manipulation of the second and third qualities of the ores then on hand and which he might cause to be extracted from the mine of the defendants after that time, and the
462 first quality was to be accumulated for the benefit of the defendant, and that the work on the mine was to be immediately stopped whenever M'r Sabin found he could not pay the expenses under this arrangement.

M'r Sabin's pay for his own services was included as a part of the expense to be paid from the second and third quality ores under the above arrangement, and the defendant was to have the first quality ore free of charge or expense.

After this arrangement was made M'r Sabin never called upon the defendant for any assistance by way of money or otherwise to aid him in carrying out the above-mentioned arrangement, neither did the defendant ever aid him to carry it out by making advances to him, directly or indirectly, on his draft or otherwise. This arrangement between M'r Becker & Sabin was made in my presence.

Interrogatory eighth. What position or office, if any, did you
463 hold in the defendant at that time?

Answer. Treasurer; I am still the treasurer of the defendant, and have held that position ever since the organization of the company.

Interrogatory ninth. If, in answer to the seventh interrogatory, you state that some arrangement was then made, state, if you know, who made said arrangement on behalf of the defendant.

Answer. That arrangement was made by Theodore H. Becker, on behalf of the defendant. He was at that time a director of the company. M'r Becker was on the 4th of the next April elected president of the defendant.

Interrogatory tenth. Do you know whether Sabin was author-
464 ized or allowed to draw drafts against the defendant, or to contract debts against the defendant, or to borrow money in its name, or to carry on its business? If so, state fully whether he was so authorized or not.

Answer. M'r Sabin was only authorized to realize fund from the manipulation and sale of the second and third quality ores then on hand, or which he might extract from the mine of the defendant; and whenever he could not pay all his expenses those ores, so as to leave the first quality ore to the defendant free of charge or expenses, he was to stop all the work or business in the defendant' ores or property, so far as he, Sabin, was concerned. Under the arrangement which was made with M'r Sabin by M'r Becker on behalf of the defendant, M'r Sabin was not authorized to draw drafts against the defendant, nor allowed to do so; neither was he authorized to contract debts against the defendant,
465 or to borrow money in its name, nor was he authorized to carry on any business in the name of the defendant. The business contemplated by this arrangement was to be done by M'r Sabin in his own name, as I understand it.

Interrogatory eleventh. State, if you know, whether Sabin was to send any pay-rolls, or to make any remittance of profits to the defendant in New York. State, if you know, what was to be done with the profits caused by working defendant's mine, if any were made.

Answer. There was no arrangement or promise made between M'r Becker & Sabin for Sabin's sending any pay-rolls to the defendant under the arrangement; there was no occasion for any such to be sent, neither was there any promise made or occasion for M'r Sabin to make any remittance to the defendant. All the profit of the defendant, so far as M'r Sabin had to do with it, was to be accumulated at the mine
466 in first-quality ore.

Interrogatory twelfth. Do you know what salary or compensation Sabin was to receive for his services? If so, please state what it was, and whether or not the same was contingent upon the defendant's mine yielding a profit.

Answer. M'r Sabin was not to have any salary. His compensation was whatever he could make or realize from the sale or manipulation of the second and third quality ores, as I have stated in my answer to the seventh interrogatory; nothing else.

Interrogatory thirteenth. State, if you know, whether Sabin was instructed by the defendant as to whether or not he was to continue or discontinue mining if the mine failed to pay expenses. If so, please state fully.

467 Answer. He was not instructed by the defendant to continue or discontinue mining, but it was a part of the agreement between M'r Becker and M'r Sabin, that he, Sabin, was to stop all work at the mine whenever the second and third quality ores would not pay all the expenses, as I have before stated.

Fourteenth interrogatory. Do you whether John F. Topping was employed by the defendant? If so, please state if you know when he was employed; for what purpose; at what salary; how long he continued in said employ; whether he was paid for his services, and who paid him, if he was paid.

Answer. When M'r Sabin came East and resigned his superintendency,

on or about the 1st of April, 1866, M'r John F. Topping was employed by the defendant to take charge of and preserve the property at
468 the mine. His salary commenced on the 1st of April, 1866, at the rate of one hundred dollars currency per month. M'r Topping continued in that position in the employ of the defendant until the first of October, 1866, when he was paid six hundred dollars by the defendant in full for his services above stated. I made the check to him for that amount and sent it to him.

Fifteenth interrogatory. Do you know of any other matter or thing, in addition to what you have already stated, that would tend to the benefit or advantage of the defendant? If so, please state the same fully and at large.

Answer. I do not think of anything further which I think would tend to the benefit or advantage of the defendant in this cause.

To the several cross-interrogatories on the part of the plaintiff,
469 hereto attached, the witness, Frederick A. Potts, answered as follows, viz:

First cross-interrogatory. If, in answer to the fifth interrogatory of the defendant, you say that George K. Sabin was appointed agent or superintendent of the defendant, *and* state how he was appointed, and if appointed more than once, how was he appointed each time?

Answer. M'r Sabin was appointed superintendent of the defendant in the month of April, 1865, by a vote or resolution passed at a meeting of the board of directors of the defendant. He was never appointed but once.

Second cross-interrogatory. If, in answer to the sixth interrogatory, you state that you know what his powers were as such agent, state fully all you know about it.

Answer to 2d X-int. The copy letter hereto attached, marked
470 "Exhibit A," gives all the knowledge I have on the subject inquired about in the 2d cross-interrogatory.

Third cross interrogatory. If, in answer to the 7th interrogatory, you state that an arrangement was made between Sabin and the defendant, state all you know about your means of knowledge, and whether the arrangement was in writing or by parol.

Answer. I have given fully, in my answer to the seventh interrogatory, all my knowledge of the arrangements made between M'r Becker, on behalf of the defendant, and M'r Sabin. My means of knowledge as to what that arrangement was *one* that I was present when the arrangement was made between them, and heard what was said by each of them; the arrangement was not in writing but was verbal.

471 Cross-int. If, in answer to the thirteenth interrogatory, you state you knew what Sabin's instructions were, state fully all you knew about it, whether such instructions were in writing or by parol, and how they were communicated to him.

Answer. I answered the 13th interrogatory that M'r Sabin was not instructed by the defendant; the agreement mentioned in my answer to the 13th interrogatory was not in writing, but was verbal and was made between M'r Becker and M'r Sabin in my presence and hearing.

Cross-interrogatory. If you say you knew Sabin was appointed agent or superintendent at any time, state fully how and by whom he was appointed.

Answer. He was appointed superintendent of the defendant in
472 April, 1865. I have stated fully, in my answer to the first cross-interrogatory, how and by whom he was so appointed.

FREDERIC A. POTTS.

I, Charles Nettleton, of the city & county of New York, in the State of New York, a commissioner duly appointed to take the deposition of the said Frederic A. Potts, a witness whose name is subscribed to the foregoing deposition, do hereby certify that previous to the commencement of the examination of the said Frederic A. Potts as a witness in the said suit between the said Rocky Mountain National Bank of Central City, as plaintiff, and the Union Gold-Mining Company a' defendant, he was duly sworn by me to testify the truth in relation to the matter in controversy between the said parties so far as he should be interrogated concerning the same; that the said deposition was taken by myself and reduced to writing by myself at my office at No.
473 117 Broadway in said city of New York, in the State of New York, on the 28th day of December, A. D. 1870, and that after said deposition was taken by me as aforesaid the interrogatories and answers thereto and the cross-interrogatories and answers thereto as written down were read over to the said witness, and that there*fore* the same was signed and sworn to by the said depon*ant*, Frederic A. Potts, before me, at the place and on the day and year last aforesaid.

Witness my hand and seal.

[SEAL.] CHARLES NETTLETON,
Commissioner, &c.

Commissioner's fees for taking the foregoing deposition, $20.50; paid by def't.

CHARLES NETTLETON,
Commissioner, &c.

474 TERRITORY OF COLORADO,
County of Gilpin, ss:

The people of the Territory to Charles Nettleton, No. 117 Broadway, New York, New York, greeting:

Whereas it has been represented to us that Samuel Bonnel, Henry Brevort, George H. Potts, Samuel B. Hord, and John H. Keeler, are material witnesses in a certain cause now depending in our district court for the second judicial district of Colorado Territory, in and for the county of Jefferson, wherein the Rocky Mountain National Bank of Central City, Colorado, is plaintiff, and the Union Gold-Mining Company of Colorado is defendant, and that the said witnesses at New York City, State of New York, aforesaid, without the said Territory of Colorado, and that personal attendance cannot be procured at the trial of the said cause:

Now know ye that we, in confidence of your prudence and fidelity,
475 have appointed, and by these presents do appoint, you commissioner to examine the said witnesses, and therefore authorize and require you to cause the said witnesses to come before you at such time and place as you may therefore designate and appoint, and diligently to examine the said witnesses on the oath or affirmation of the said witnesses by you first duly in that behalf administered, and faithfully to take the deposition of the said witnesses upon all interrogatories and cross-interrogatories, inclosed with or attached to these presents, both on part of the said plaintiff and the said defendant, and none others, and the same when thus taken, together with this commission and the said interrogatories, to certify into our said district court with the least possible delay.

Witness Curtis G. Hathaway, clerk of said district court, and the seal thereof, at Central City, in said county and Territory, this twenty-third day of August, A. D. 1871.

[SEAL.] CURTIS G. HATHAWAY, *Clerk.*

476 In the district court in and for the second judicial district, county of Jefferson, to the October term, 1871.

TERRITORY OF COLORADO,
County of Jefferson, ss:

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City, Colorado, pl'ff,
vs.
UNION GOLD-MINING COMPANY OF COLORADO, def't.

The above-named plaintiff is hereby notified that on August 31st, 1871, the Union Gold-Mining Company of Colorado, the defendant in the above-entitled cause, will sue out of the office of the clerk of the district court of said county a dedimus potestat*um* or commission to be directed to Charles Nettleton, of No. 117 Broadway, city of New York, and State of New York, as commissioner to take the deposition of Samuel Bonnel, Henry Brevort, George H. Potts, Samuel B. Hord, and John H. Keeler, of said city and State, to be used in evi-
477 dence on the trial of the above-entitled cause now depending and undetermined in the district court of said county on the common-law side thereof, and that a copy of the interrogatories hereto attached will be appended to said dedimus potestat*um* or commission, to be propounded to said witnesses on the part of and in behalf of the defendant, and you can file cross-interrogatories and join in said commission if you see fit.

H. BUTLER &
E. WAKELY,
Def't's Att'ys.

TO JOHNSON & TELLER,
Att'ys for Pl'ff.

In the district court in and for the second judicial district, county of Jefferson, to the October term, 1871.

TERRITORY OF COLORADO,
County of Jefferson, ss:

Interrogatories to be propounded to Samuel Bonnel, Henry Brevort, George H. Potts, Samuel B. Hord, and John H. Keeler, respectively, witnesses to be produced, sworn, and examined under & by
478 virtue of the dedimus potestat*um* or commission to be issued in pursuance of the annexed notice.

Interrogatory 1st. What is your name, age, occupation, and place of residence?

Int. 2nd. Do you know the parties to this suit or either of them, and which of them, and how long have you known them respectively?

Int. 3d. Did you ever hold any office or position in the defendant? If so, state fully.

Int. 4th. Do you know George K. Sabin? If so, please state when and where you knew him.

Int. 6th. Do you know whether George K. Sabin was appointed agent or superintendent of the defendant? If so, please state when he was appointed, for how long, how long he acted under such appointment, and whether he was appointed more than once.

479 Int. 6th. If in answer to the preceeding interrogatory you state

that Sabin was appointed such agent or superintendent, state, if you know, what were his powers and duties.

Int. 7th. Do you know whether Sabin was in New York City in the fall of the year 1866, and whether an arrangement was made between him and the defendant by which he was to take charge of and work the defendant's property? If you answer that you do, please state fully all you know about it, and what were the terms and conditions of the same.

Int. 8th. What position or office, if any, did you hold in the defendant at that time.

Int. 9th. If, in answer to the 7th interrogatory, you state that some arrangements were then made, state, if you know, who made such arrangements on behalf of the defendant.

480 Int. 10th. Do you know whether Sabin was authorized or allowed to draw drafts against the defendant, or to borrow money in its name, or to carry on its business? If so, state fully if he was so authorized or not.

Int. 11th. State, if you , whether Sabin was to send any pay-rolls or to make any remittance of profits to the defendant in New York; state, if you , what was to be done with the profits caused by working the mine, if any were made.

Int. 12th. Do you know what salary or compensation Sabin was to receive for his services? If so, please state what it was, and whether or not it was contingent on the defendant's mine yielding a profit.

Int. 13th. State, if you , whether Sabin was instructed by defendant as to whether or not he was to continue or discontinue mining

481 if the mine failed to pay expenses. If so, state fully.

Int. 14th. Do you know whether John F. Topping was employed by the defendant? If so, please state, if you know, when he was employed, for what purpose, at what salary, how long he continued in said employ, whether he was paid for his services, and how paid, if he was paid.

Int. 15th. Do you know of any other matter or thing in addition to what you have already stated that would tend to the benefit or advantage of the defend't? If so, please state the same fully and at large.

HUGH BUTLER &
E. WAKELY,
Att'ys for Def'ts.

Cross-interrogatories:

1st. If in answer to the fifth interrogatory you say you know of the appointment of Geo. K. Sabin, state how you know it, and whether

482 any record of such appointment was kept, and, if so, annex a copy thereof to your answer.

2nd. If you state anything about his powers and duties, state how you know what his powers and duties were, and whether he was or was not furnished with specific instructions, whether such instruction', if any, were in writing or verbal, and, if in writing, state, if you know, who has such instructions, and whether you can or cannot procure a copy thereof, and, if so, annex such copy to your answer to this cross-interrogatory.

3d. If in answer to any interrogatories you say you know of any arrangement between defendant & Sabin as to the charge of defendant's property, state fully and specially when, where, and by whom made, whether the same was or was not reduced to writing, and who were present when it was made. State also whether it was or was not

483 made by direction of defendant, and whether it was done by resolution of such directors, and whether record thereof was kept by

the said directors, and, if so, annex a copy of such record to your answer to this cross-interrogatory.

4th. State who have been the president, secretary, and treasurer, also the directors or trustees of the said defendant since the year 1864; state fully the offices held and the length of time held by each.

5th. If, in answer to 9th interrogatory, you say any arrangement was made by any one in behalf of defendant, state how you know it was on defendant's behalf, your means of knowing, from whom derived, and when you first learned of such arrangements.

6th. If, in answer to the 10th interrogatory, you know whether said Sabin was authorized to draw drafts, &c., state fully how you know it, your means of knowing, and from whom such knowledge was derived; and state specially whether he did or did not draw drafts, and if
484 so, on whom, when and for what amount drawn; and if you do not know exactly, state in the aggregate the amount, the amount of the drafts, for how long a time did he continue to draw drafts, the time when the first and last drafts were drawn, and whether such drafts were or were not paid.

7th. If, in answer to the 12th interrogatory, you say you know what his salary was to be, state how you know when the salary was fixed upon, by whom and how long it was continued, and whether it has or has not been paid.

8th. If you say John F. Topping was employed by defendant, state how you know and from whom you derived your information.

9th. State how long Sabin was employed in attending to the mine and mill of the defendant, & how if any gold or money was remit-
485 ted by him to the company or any of its officers, and when such gold or money was remitted, & how often, if ever, did Sabin make reports to or correspond with the company or any of its officers.

JOHNSON & TELLER,
Pl'ff Att'ys.

Notice of a copy of above interrogatories is hereby admitted, & time only passed & consent to issue of dedimus at once hereby given, saving all other objections.

JOHNSON & TELLER,
Pl'ff Att'ys.

Exhibit A.—C. N., Com.

OFFICE OF THE UNION GOLD-MINING COMPANY OF COLORADO,
NO. 110 BROADWAY, ROOM NO. 3,
New York, April 18th, 1865.

Col. GEO. K. SABIN:

DEAR SIR: M'r Becker has submitted to our board your telegram stating that you will accept the superintendency of the Union
486 Gold-Mining Company of Colorado; so, without further preliminaries, they instruct:

1st. On delivery of the enclosed letter to Col. Mallary he will place you in full possession of the books, papers, office, and property of the Union Company, with a copy of all accounts and liabilities against the company.

2d. Stop all work except sinking one shaft on the Bates Lode, but sink that shaft continuously and as speedily as possible through every cap until further advised. We expect you will soon find, if that has not been done already, at least 50 feet of paying ore.

3d. We desire that all work, sinking shaft, &c., &c., shall be done by

contract, at so much per foot, if possible, for our entire board are opposed to all checks and pay-rolls, and the contract-system is far more satisfactory.

4th. We desire a letter or report from you each week, stating what progress has been made in sinking such shaft, and what kind of
487 ore it is passing through, width of crevice, and width of iron, (if any,) also weekly expenses.

5th. Send us full monthly reports of all our business operations at the end of each month, and from time to time write us any suggestions you may deem necessary for the company to know in relation to their affairs. Our M'r Becker contemplates being in Colorado in June, and will be authorized to make satisfactory arrangements with you as regards compensation, &c.

He recommends you very highly to the company, and says you will cheerfully obey all instructions of the company here, conduct its affairs with the utmost economy, and see to our interest in Colorado promptly. In short, we are led to expect that you will soon, if anybody can, make our mines pay. Let us have your views and the character and prospect of our mine at the earliest day.

Hoping all will go satisfactory, I am, very truly, your ob't serv't,

EDWIN CROSSWELL,
President.

488 *Exhibit B.—C. N., Comm'r.*

OFFICE OF THE UNION GOLD-MINING CO. OF COLORADO,
No. 110 BROADWAY, ROOM No. 3,
New York, September 29, 1865.

Col. GEO. K. SABIN:

DEAR SIR: We telegraphed you to-day, "If you can sell the ore to Lyon, go on; if not, stop everything immediately." This conclusion is based on the suggestions in your letter of the 6th by M'r Wright. The improvements you consider essential (timbering the shaft, pump, and addition to the house or mill) you estimate at a total cost of $19,000. If you get from M'r Lyon $20,000 for the 100 tons, at a cost of $5,000 for getting out the ore from the upper shaft, as we learn you have exhausted all the ore heretofore taken out, you will realize $15,000; but if you can sell to
Lyon, and can get sufficient from the shaft, in addition to the sale
489 to L., go on and put the mine in order if it can be done economy and with the certainty that we do not make further inroads in the treasury.

We feel compelled to limit our operations to this extent, as we must not tread on the treasury beyond the expenditure of month of Sept., especially if they exceed the remittance of gold.

It is not thought worth while to do anything with the Lyon process until it is fully demonstrated by the operation of his new furnaces, and it proves to be a success; when this shall be certain, and the cost not too great, it will be time to determine our action on that subject. You give the B. and B. company the required notice of discontinuing the contract for the mill the latter part of August, and M'r Wright informs that the Porte mill broke down, so that before this you are standing still. This certainly is better than to go forward with the prospect of running in debt.

Your remittance of the gold rec'd 20th inst., 72 oz., yielded $1,696.86 currency. Yesterday 47 oz. were sold.

Very truly yours,

EDWIN CROSSWELL.

490 EXHIBIT C.

Exhibit C.—C. N., Comm'r.

The trustees elected Feb'y 26, 1864, of the Union Gold-Mining Co. of Colorado, were Edwin Crosswell, Leverett E. Rice, Thomas M. Wheeler, John E. Keeler, George H. Potts, Sam'l B. Hord, Edw'd A. Quintord, Edward S. Sanford, and Theodore H. Becker.

And on Feb'y 29th, 1864, the trustees elected the following officers of the Union Gold-Mining Co. of Colorado, to serve for one year, or until successors were duly elected:

Edwin Crosswell, president; John E. Keeler, vice-president; Frederic A. Potts, Treasurer.

On April 3d the following were elected trustees of the Union Gold-Mining Co. of Colorado:

Edwin Crosswell, Theodore H. Becker, John E. Keeler, Thomas M. Wheeler, George W. Baker, George H. Potts, Edw'd S. Sanford, John Dore, Samuel B. Hord.

On the same day, at a meeting of the board of directors of the
491 Union Gold-Mining Co. of Colorado, the following officers were duly elected:

Edwin Crosswell, president; Geo. W. Baker, vice-president; Frederic A. Potts, treasurer; Henry Brevorst, j'r, ass't secretary.

On April 2d, 1866, the following were elected trustees of the Union Gold-Mining Co. of Colorado:

Geo. H. Potts, Sam'l B. Hord, Theo. H. Becker, E. S. Sanford, Edwin Croswell, J. B. Baker, Sam'l Bonnell, j'r, E. A. Quintord, S. S. Crosby.

On April 5th, 1866, at a meeting of the board of directors of the Union Gold-Mining Co. of Colorado, the following officers were duly elected:

Samuel Bonnell, j'r, president; Theo. H. Becker, vice-president; Frederic A. Potts, treasurer.

On April 1st, 1867, the following were elected trustees of the Union Gold-Mining Co. of Colorado:

Frederic A. Potts, James Brady, Joseph E. Baker, G. H. Danforth, Joseph M. Werner, Parker Jones, John H. Watson, Henry B. Griffith, and Theodore H. Becker.

492 And on April 2d, 1867, at a meeting of the trustees of the Union Gold-Mining Co. of Colorado, the following officers were duly elected:

Theodore H. Becker, president; Joseph M. Werner, vice-president; Frederic A. Potts, treasurer.

On April 6th, 1868, the directors of the Union Gold-Mining Co. of Colorado, of 1867, were re-elected by the stockholders, & they chose the same officers. On April 5th, 1869, the following were elected trustees of the Union Gold-Mining Co. of Colorado:

Theodore H. Becker, G. H. Danforth, John H. Watson, Henry B. Griffith, Ja's B. Baker, Ja's M. Werner, James Brady, Fred'c A. Potts, Channing G. Fruner.

And, April 7th, 1869, the trustees of the Union Gold-Mining Co. of Colorado elected the following officers:

Theodore H. Becker, president; Joseph M. Werner, vice-president; Frederic A. Potts, treasurer.

There has been no change in the directors or officers of the company since the date; the directors & officers at present are the same as those elected April 5, 1869.

493 The deposition of Samuel Bonnel, j'r, of Elizabeth, Union County, New Jersey, and Henry Brevort, of the city, county, and State of New York, witnesses of lawful age, produced, sworn, and examined, each upon his corporal oath, on the 27th day of September, A. D. 1871, at the office of Charles Nettleton, number 117 Broadway, New York City, in the State of New York aforesaid, by the said Charles Nettleton, a commissioner duly appointed by a dedimus potestatum issued out of the clerk's office of the district of court of Gilpin County, in the Territory of Colorado, bearing teste in the name of Curtis G. Hathaway, clerk of the said district court, and the seal of said court affixed thereto, and to me directed as such commissioner, for the examination of the said Samuel Bonnel, j'r. & Henry Brevort, witnesses in a certain suit and matter in controversy now pending and undetermined in the said district court, wherein the Rocky Mountain National Bank of Central City, Colorado, is plaintiff, and the Union Gold-Mining
494 Company of Colorado is defendant, in behalf of the said defendant, as well upon the cross-interrogations of the plaintiff as upon the interrogations of the defendant, which were attached to or included with the commission hereto annexed, and upon none others.

The said Samuel Bonnel, j'r, being first by me duly sworn as a witness in the said cause, previous to the commencement of his examination, to testify the truth, as well on the part of plaintiff as on the part of the defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name, age, occupation, and place of residence?

Ans. My name is Samuel Bonnel, j'r; my age is forty-seven years; my occupation, a wholesale coal-dealer; I reside at Elizabeth, Union
495 County, New Jersey; my place of business is at New York City.

Interrogatory second. Do you know the parties to this suit, or either of them, and which of them, and how long have you known them, respectively?

Ans. I know the defendant, and have known it from its organization. I do not know the plaintiff.

Interrogatory third. Did you ever hold any office or position in the defendant? If so, state fully.

Answer. I was president and trustee of the Union Gold-Mining Company of Colorado, the defendant, for one year, from April 5, 1866, to April 2, 1867.

Interrogatory fourth. Do you know Geo. K. Sabin? If so, please state when and where you knew him.

Ans. I do know Geo. K. Sabin. I became acquainted with him
496 at the office of the Union Gold-Mining Company of Colorado, the defendant, in New York City, on or about the month of April, 1866.

Interrogatory fifth. Do you know whether Geo. K. Sabin was appointed agent or superintendent of the defendant? If so, please state when he was appointed, for how long, how long he acted under said appointment, and whether he was appointed more than once.

Ans. I do know Geo. K. Sabin was appointed superintendent of the defendant. He was appointed about April 18, 1865, and held his position until he resigned, which was in the month of April, 1866. He was not appointed but once.

Interrogatory sixth. If in answer to the preceeding interrogatory you

state that said Sabin was appointed such agent or superintendent, state, if you know, what were his powers and duties.

497 Ans. His duty was to take charge of the mine & company property, but on no account was he to run the defendant into debt.

Interrogatory seventh. Do you know whether Sabin was in New York City in the fall of the year 1866, and whether an arrangement was made between him and the defendant by which he was to take charge of and work the defendant's property? If you answer that you did, please state fully all you know about it, and what were the terms and conditions of the same.

Ans. I do know that the said Geo. K. Sabin was in New York City in the fall of the year 1866; the defendant accepted his proposition to work their mines on Bates lode on tribute—he agreeing to give all the first-quality ore he should take out for the use of the mines of the defendant on said Bates lode; the rent or tribute was to be paid by his (Sabin's)

498 leaving all the first-quality ore at the Bates mine. This was in the fall of the year 1866.

Interrogatory eighth. What position or office, if any, did you hold in the defendant at that time?

Ans. I was president, and a member of the executive committee, of the defendant.

Interrogatory ninth. If in answer to the 7th interrogatory you state that some arrangements were then made, state if you know who made such arrangement on behalf of the defendant.

Ans. I stated, in answer to the seventh interrogatory, that the defendant accepted a proposition made by Geo. K. Sabin to work their mines on the Bates lode on tribute, he agreeing to give the defen't all the first-class ore he should take out for the use of their mines on said Bates lode. His (Sabin's) proposition was accepted on behalf of the

499 defendant by T. H. Becker, the vice-president, and F. A. Potts, treasurer, in the presence of Henry Brevoort, acting secretary of the Union Gold-Mining Co. of Colorado.

Interrogatory tenth. Do you know whether Sabin was allowed to draw drafts against the defendant, or to borrow money in its name, or to carry on its business? If so, state fully whether he was so authorized or not.

Ans. I know the *the* said Geo. K. Sabin was not authorized or allowed to draw drafts against the defendant, or to borrow money in its name to carry on the defendant's business or for any other purpose. I hereby refer to the papers marked Exhibit "A" & "B", for the instructions and authority given to Geo. K. Sabin by the defendant.

Interrogatory eleventh. State, if you know, whether Sabin was to send any pay-rolls, or to make any remittance of profits, to the defend-

500 ant in New York; state if you know what was to be done with the profits caused by working the mine, if any were made.

Ans. He was not to send any pay-rolls or to make any remittance of profits to the defendant in New York, the rent or tribute was to be paid by his (Sabin) leaving the first-quality ore at the Bates mine, as stated in my answer to the seventh interrogatory.

Interrogatory twelfth. Do you know what salary or compensation Sabin was to receive for his services? If so, please state what it was, and whether or not it was contingent upon the defendant's mine yielding a profit.

Ans. He was to receive a salary at the rate of thirty-five hundred ($3,500) dollars per annum from his appointment, about April 18, 1865, to January 1, 1866, and at the rate of one hundred ($100) dollars

per month from January 1, 1866, to April, 1866, when he resigned; at which time he was paid in full. His salary was not contingent upon the defendant's mine yielding a profit.

Interrogatory thirteenth. State, if you know, whether Sabin was instructed by defendant as to whether or not he was to continue or discontinue mining if the mine failed to pay expenses; if so, please state fully.

Ans. Full instructions were sent him by the defendant through their president, my predecessor in office, M'r Edwin Creswell; they are set forth in Exhibit A & B herewith attached.

Interrogatory fourteenth. Do you know whether John F. Topping was employed by defen't? If so, please state, if you know, when he was employed, for what purpose, at what salary, how long he continued in said employ, whether he was paid for his services, and how paid, if he was paid.

Ans. John F. Topping was employed by defendant to take charge of the property, as watchman, at a salary of one hundred ($100) dollars per month; he continued in the employ of the defendant from April 1, 1866, to October 1, 1866; he was paid by the defendant for his services by a certified draft sent him by F. A. Potts, treasurer of the defendant.

Interrogatory fifteenth. Do you know of any other matter or thing in addition to what you have already stated that would tend to the benefit or advantage of the defendant? If so, please state the same fully and at large.

Ans. Shortly after M'r Geo. K. Sabin's appointment as agent or superintendent by the defendant, as shown in Exhibit A herewith attached, he commenced making remittances of money, gold, or retort, to the treasurer of the defendant, M'r F. A. Potts; this was about the latter part of April or first of May, 1865; but his expenditures so far exceeded his remittances that the president, under the direction of the trustees of the defendant, sent him a telegraph dispatch in words as follows: "If you can sell the ores to Lyon, go on; if not, stop every thing immediately;" and also sent him instructions on the same date, as shown in Exhibit B, which is herewith attached.

The remittances made by Geo. K. Sabin during his superintendency for the defendant amounted to between sixteen and seventeen thousand dollars. The outlay or expenditure made by M'r Sabin amounted to between twenty-two and twenty-three thousand dollars. All the remittances were made to the treasurer of the defendant, Mr. F. A. Potts, the months of April and November 2d, 1865.

After Geo. K. Sabin's resignation, on or about the first of April, 1866, he did not correspond with me, or with any of the officers of the company, to my knowledge. I, as the president of the defendant, considered M'r Sabin a renter or lessee of the defendant after he returned to Colorado in the fall of the year 1866. I think he told me he was engaged to go to North Carolina on business.

To the several cross-interrogatories propounded to him, the witness, Samuel Bonnel, j'r, answers as follows:

Cross-interrogatory first. If in answer to the fifth interrogatory you say you know of the appointment of Geo. K. Sabin, state how you know it, and whether any record of such appointment was kept; and, if so, annex a copy thereof to your answer.

Ans. I know of his appointment through the officers of the company, and by Exhibit A herewith attached, which is a true copy of the minutes kept by the company.

Cross-interrogatory second. If you state anything about his powers and duties, state how you know what his powers and duties were, and whether he was or was not furnished with specific instructions,
505 whether such instructions, if any, were verbal or in writing; and, if in writing, state, if you know, who has such instructions, and whether you can or cannot procure a copy thereof, and, if so, annex a copy to your answer to this cross-interrogatory.

Ans. M'r Sabin was instructed as to his specific duties and powers as superintendent. These instructions were given by M'r Edwin Crosswell, my predecessor in office, under direction of the trustees of the defendant, as are shown by Exhibit A & B, a copy of which is hereto attached.

Cross-interrogatory third. If in answer to any interrogatories you say you know of any arrangement between defendant & Sabin as to the charge of defendant's property, state fully and specially when, where, and by whom made; whether the same was or was not reduced to writing, and who were present when it was made. State, also, whether it was or was not made by directors of defendant, and whether it was done by resolution of such directors, and whether record thereof was
506 kept by the said directors; and, if so, annex a copy of such record to your answer to this cross-interrogatory.

Ans. In my answer to the seventh direct interrogatoy I said that M'r Sabin was in New York City in the fall of the year 1866; that the defendant accepted his (Sabin's) proposition to work their Bates Mine on tribute, he agreeing to give the defendant all the first-quality ore he should take out for the use of their Bates Mine. The proposition alluded to was made by M'r Sabin at the office of the Union Gold-Mining Company of Colorado, number 110 Broadway, in New York City, some time in October or November of the year 1866. It was not reduced to writing. The parties present were T. H. Becker, F. A. Potts, Henry Brevoort, Geo. K. Sabin, and myself. There was no arrangement made in writing nor any resolution passed in regard to this proposition by the defendant.

I stated in my answer to the ninth direct interrogatory that the proposal of M'r Sabin to work the defendant's Bates Mine on tribute
507 was accepted on behalf of the company by T. H. Becker, vice-president, and F. A. Potts, treasurer of the defendant, in presence of Henry Brevoort, acting secretary of the defendant. I also stated in my answer to the eleventh direct interrogatory that the rent or tribute was to be paid by his (Sabin's) leaving the first-quality ore at the Bates Mine.

Cross-interrogatory fourth. State who have been the president, secretary, and treasurer, also the directors or trustees, of said defendant since the year 1866. State fully the offices held, and the length of time held by each.

Ans. The names of the officers and trustees of the defendant, together with the length of time held by each, are fully shown by Exhibit C, hereto attached.

Cross-interrogatory fifth. If in answer to the ninth interroga-
508 tory you say any arrangement was made by any one in behalf of defendant, state how you know it was on defendant's behalf, your means of knowing, from whom derived, and when you first learned of such arrangements.

Ans. I know that the arrangement was made in defendant's behalf, because I was present when it was so made. The particulars are more fully given in my answer to the third cross-interrogatory.

Cross-interrogatory sixth. If in answer to the 10th interrogatory you know whether said Sabin was authorized to draw drafts, &c., state fully how you know it, your means of knowing, and from whom such knowledge was derived, and state specially whether he did or did draw drafts, and, if so, on whom, when, and for what amount drawn; and, if you do not know exactly, state in the aggregate the amount of the drafts, for how long a time did he continue to draw drafts, the
509 time when the first & the last drafts were drawn, and whether such drafts were or were not paid.

Ans. As I have already stated in my answer to the tenth direct interrogatory, Sabin was not allowed or authorized to draw drafts against the defendant, or borrow money in its name; he, Sabin, never drew any drafts on the defendant, to my knowledge.

Cross-interrogatory seventh. If in answer to the 12th interrogatory you say you know what his salary was to be, state how you know, when the salary was fixed upon, by whom, and how long it was continued, and whether it has or has not been paid.

Ans. My information was derived from the officers of the defendant and from M'r Sabin's bill; his salary continued and was paid in full from the date of his appointment, in April, 1865, to the date of his resignation, in April, 1866, as set forth in my answer the 12th direct interrogatory.

510 Cross-interrogatory eighth. If you say John F. Topping was employed by defendant, state how you know, by whom, and from where you derived your information.

Ans. My information respecting the employment of John F. Topping by defendant was derived from F. A. Potts, treasurer of defendant.

Cross-interrogatory ninth. State how long Sabin was employed in attending to the mine & mill of the defendant, & how much, if any, gold or money was remitted by him to the company, or any of its officers, and when such gold or money was remitted, and how often, if ever, did Sabin make reports to or correspond with the company, or any of its officers.

Ans. Sabin was employed in attending to the mine of defendant from April 18, 1865, to about the first day of April, 1866. Between six-
511 teen and seventeen thousand dollars in money, gold and retort, was remitted by him to the defendant, which I have already explained and stated in my answer to the last direct interrogatory, therein giving the amount of the remittances and expenditures, and the time the remittances were made. I do not know how often, if ever, M'r Sabin made reports to or corresponded with my predecessor in office, M'r Edwin Croswell. He, Sabin, never made any reports to or corresponded with me after I became president of the defendant, or with any other officer of the defendant, to my knowledge. I, as president of the defendant, (as stated in my answer to the last direct interrogatory,) considering M'r Sabin as a renter or lessee of the defendant after he returned to Colorado in the fall of 1866 & some six or eight months after his resignation in April of that year.

SAM. BONNEL, J'R.

The said Henry Brevoort, being first by me duly sworn as a wit-
ness in the said cause, previous to the commencement of his
512 examination, to testify the truth, as well on the part of plaintiff as on the part of defendant, in relation to the matters in controversy between the said plaintiff and defendant, so far as he should be interrogated, testified and deposed as follows:

Interrogatory first. What is your name, age, occupation, and place of residence?

Ans. My name is Henry Brevoort; my age is twenty-nine years; my occupation, a coal-agent, and I reside at New York City, in the county and State of New York.

Interrogatory second. Do you know the parties to this suit, or either and which of them, and how long have you known them respectively?

Ans. I know the defendant, and have known it since December, 1864; I do not know the plaintiff.

513 Interrogatory third. Did you ever hold any office or position in the defendant? If so, state fully.

Ans. I held the office of assistant secretary of the defendant. I was appointed assistant secretary by a resolution of the board of trustees about the first of April, 1865.

Interrogatory fourth. Do you know Geo. K. Sabin? If so, please state when and where you knew him.

Ans. I do know Geo. K. Sabin. I became acquainted with him at the office of the defendant, at No. 110 Broadway, New York City, on or about the last of March or the first of April, 1866.

Interrogatory fifth. Do you know whether Geo. K. Sabin was appointed agent or superintendent of the defendant? If so, please
514 state when he was appointed, for how long, how long he acted under said appointment, and whether he was appointed more than once?

Ans. I do know that Geo. K. Sabin was appointed superintendent of the defendant on the 18th day of April, 1865, as per Exhibit A, hereto attached. He was not appointed but once. He resigned some time in the month of April, 1866.

Interrogatory sixth. If in answer to the preceding interrogatory you state that said Sabin was appointed such agent or superintendent, state, if you know, what were his powers and duties.

Ans. His powers and duties are all set forth in Exhibit A, hereto attached.

Interrogatory seventh. Do you know whether Sabin was in New York City in the fall of the year 1866, and whether an arrangement
515 was made between him and the defendant by which he was to take charge of and work the defendant's property? If you answer that you do, please state fully all you know about it, and what were the terms and conditions of the same.

Ans. I do know that Geo. K. Sabin was in New York City in the fall of the year 1866. He called several times at the new office of the defendant during the latter part of the summer and in the fall of that year. The defendant accepted his (Sabin's) proposition to work their Bates mine on tribute, he agreeing to give the defendant all the first-quality ore he should take out, for the use of their Bates mine, which first-quality ore he agreed to leave on the surface at the mine for the defendant. He was to have all the other ores for his share. This was in the fall of the year 1866.

Interrogatory eighth. What position or office, if any, did you hold in the defendant at that time?

516 Ans. I was assistant secretary of the defendant, as stated in my answer to the third interrogatory.

Interrogatory ninth. If, in answer to the 7th interrogatory, you state that some arrangements were then made, state, if you know, who made such arrangements on behalf of the defendant.

Ans. I stated, in answer to the 7th interrogatory, that the defendant accepted Mr. Sabin's proposition to work their Bates mine on tribute, he

agreeing to give the defendant all the first-class ores he should take out, for the use of their Bates mine, which said first-quality ore he agreed to leave on the surface at the mine for the defendant. This proposition of Mr. Sabin's was accepted on behalf of the defendant by T. H. Becker, vice-president, and F. A. Potts, treasurer of the defendant.

517 Interrogatory tenth. Do you know whether Sabin was authorized or allowed to draw drafts against the defendant, or to borrow money in its name, or to carry on its business? If so, state fully whether he was so authorized or not.

Ans. I do know that Geo. K. Sabin had no authority to draw drafts on the defendant or to borrow in its name; the instructions and authority sent to M'r Sabin by the trustees of the defendant, through M'r Edwin Croswell, are fully set forth in Exhibit' A & B, herewith attached.

Interrogatory eleventh. State, if you know, whether Sabin was to send any pay-rolls or to make any remittance of profits to the defendant in New York. State, if you know, what was to be done with the profits caused by working the mine, if any were made.

Ans. He was not to send any pay-rolls or to make any remittances of profits to the defendant in New York; the rent, or tribute, was to

518 be paid by his (Sabin's) leaving the first-quality ore on the surface of the Bates mine, as stated in my answer to the seventh interrogatory. Before his resignation in April, 1866, he was to work the defendant's property, as directed in Exhibits A & B, herewith attached.

Interrogatory twelfth. Do you know what salary or compensation Sabin was to receive for his services? If so, please state what it was, and whether or not it was contingent upon the defendant's mine yielding a profit.

Ans. He was to receive a salary or compensation at the rate of thirty-five hundred dollars ($3,500) per annum from the date of his appointment, on or about April 18, 1865, to January 1, 1866, and one hundred dollars ($100) per month from January 1, 1866, until about April 1, 1866, when he resigned, and John F. Topping was appointed to take possession of defendant's property. Sabin's salary was not con-

519 tingent upon the defendant's mine yielding a profit.

Interrogatory thirteenth. State, if you know, whether Sabin was instructed by defendant as to whether or not he was to continue or discontinue mining if the mine failed to pay expenses. If so, please state fully.

Ans. The trustees of the defendant sent M'r Sabin full instructions, through their president, M'r Edwin Croswell; they are set forth in Exhibits A & B, herewith attached.

Interrogatory fourteenth. Do you know whether John F. Topping was employed by the defendant? If so, please state, if you know, when he was so employed, for what purpose, at what salary, how long he continued in said employ, whether he was paid for his services, and how paid, if he was paid.

Ans. John F. Topping was employed by the defendant on or

520 about the 1st of April, 1866, to look after the company's property. His salary was to be one hundred dollars per month. He continued in the employ of the defendant until October 1, 1866. He was paid for his services. The defendant sent him a draft through M'r F. A. Potts, treasurer of the defendant; said draft was certified.

Interrogatory fifteenth. Do you know of any other matter or thing, in

addition to what you have already stated, that would tend to the benefit or advantage of the defendant? If so, please state the same fully and at large.

Ans. I know that shortly after M'r Geo. K. Sabin took hold of the defendant's mine, under their appointment and instructions as set forth in Exhibit A, herewith attached, he commenced sending the defendant money, gold or retort, but his expenditures, by contracts, so far exceeded his shipments of money to the defendant, that the trustees
521 of the defendant ordered their president, M'r Edwin Croswell, to stop all work at the mines. M'r Croswell telegraphed M'r Sabin in words as follows: "If you can sell the ores to Lyon, go on; if not, stop everything immediately;" and also wrote him full instructions what to do, on the same day he sent the telegraph dispatch. Said instructions are fully set forth, and also a copy of the dispatch sent, in paper marked "Exhibit B," herewith attached.

Very soon thereafter M'r Sabin shut down the works or mines of the company. During the winter or spring following, he, Sabin, came on to New York City and rendered his bill in full. His bill for salary was at the rate of thirty-five hundred dollars ($3,500) per annum, from the 18th day of April, 1865, (the date of his appointment) to January 1, 1866, and at the rate of one hundred dollars ($100) per month from January 1st, 1866, to the 1st day of April, 1866, at which time he resigned his agency, or superintendency, and quit the defendant's employ and was paid in full. He, Sabin, called at the company's office
522 several times during the summer and fall of 1866, and had several conversations with me. He said he was engaged in some mining enterprise in North Carolina.

It was during one of these visits that he made the proposition that I stated in my answer to the seventh interrogatory. M'r Sabin's remittances of money, gold, and retort from the time of his appointment until he resigned, amounted to between sixteen and seventeen thousand dollars. His expenditures for contracts, &c., were between twenty and twenty-two thousand dollars. I never had any interest or owned any stock in the defendant.

To the several cross-interrogatories propounded to him the witness, Henry Brevoort, answered as follows:

Cross-interrogatory first. If, in answer to the fifth interrogatory, you say you know of the appointment of Geo. K. Sabin, state how
523 you know it, and whether any record of such appointment was kept, and if so, annex a copy thereof to your answer.

Ans. I know of his (Sabin's) appointment as superintendent, because I was the assistant secretary, and copied the papers at the time. Exhibit A, hereto attached, is a copy of the record showing his appointment.

Cross-interrogatory second. If you state anything about his powers and duties, state how you know what his powers and duties were, and whether he was or was not furnished with specific instructions; whether such instructions, if any, were verbal or in writing; and if in writing, state, if you know, who has such instructions, and whether you can or cannot procure a copy thereof, and, if so, annex such copy to your answer to this cross-interrogatory.

Ans. The instructions to Geo. K. Sabin as to his powers and duties are all contained in Exhibits A & B, herewith attached, which
524 instructions were authorized by the trustees of the defendant, and sent by the president, M'r Edwin Crosswell, to M'r Sabin.

Cross-interrogatory third. If, in answer to any interrogatory, you say you know of any arrangement between defendant and Sabin as to the charge of defendant's property, state fully and specially when, where, and by whom made, whether the same was or was not reduced to writing, and who were present when it was made, state also whether it was or was not made by directors of defendant, and whether it was done by regolution of such directors, and whether record thereof was kept by the said directors; and if so, annex a copy of such record to this cross-interrogatory.

Ans. In my answer to the seventh direct interrogatory, I said that M'r Sabin was in New York City in the fall of the year 1866; that
525 he called several times at the new office of the defendant during the latter part of the summer and fall of that year; that the defendant accepted Sabin's proposition to work their Bates mine on tribute, he (Sabin) agreeing to give the defendant all the first-quality ore he should take out, for the use of their Bates mine, which said first-quality ore he agreed to leave on the surface at the mine for the defendant, and that he was to have the other ores for his share. This proposition was made by Geo. K. Sabin to the defendant at their office, number 110 Broadway, New York City, in the fall of the year 1866. It was not reduced to writing. M'r T. H. Becker, vice-president, M'r F. A. Potts, treasurer, and M'r Samuel Bonnel, j'r, president, of defendant, and myself, were present. It was not accepted by a resolution: no record was kept of it.

Cross interrogatory fourth. State who have been the president, secretary, and treasurer, also the directors or trustees, of the said
526 defendant since the year 1864. State fully the offices held, and the length of time held by each.

Ans. The names of the officers and trustees of the defendant, together with the length of time held by each, are fully shown by Exhibit C, hereto attached, except as to secretary. By resolution of the board of trustees, made about the first of April, 1865, I was appointed assistant secretary of the defendant.

Cross-interrogatory fifth. If, in answer to the ninth interrogatory, you say any arrangement was made by any one in behalf of defendant, state how you know it was on defendant's behalf, your means of knowing, from whom derived, and when you first learned of such arrangements.

Ans. I was present when the proposition was made by Sabin and accepted by the defendant, as stated in my answer to the second and ninth direct interrogatory.

527 Cross-interrogatory sixth. If in answer to the 10th interrogatory you know whether Sabin was authorized to draw drafts, &c., state fully how you know it, your means of knowing, and from whom such knowledge was derived; and state specially whether he did or did not draw drafts, and, if so, on whom, when, and for what amount drawn; and if you do not know exactly, state in the aggregate the amount of the drafts, for how long a time did he continue to draw drafts, the time when the first and last drafts were drawn, and whether such drafts were or were not paid.

Ans. As I have stated in my answer to the tenth direct interrogatory, I do know that Geo. K. Sabin had no authority to draw drafts on the defendant, or to borrow money in its name. The instructions and authority sent to M'r Sabin by the trustees of the defendant, through M'r Edwin Croswell, president, are fully set forth in Exhibit A & B, herewith attached. Sabin never drew any drafts on the defendant to my knowledge.

528 Cross-interrogatory seventh. If in answer to the twelfth interrogatory you say you know what his salary was to be, state how you know when the salary was fixed upon, by whom, and how long it was continued, and whether it has or has not been paid.

Ans. I know what M'r Sabin's salary was to be, because M'r Sabin told me. When he came to New York in March or April, 1866, he rendered his bill and resigned his position as superintendent, and was paid in full by the defendant from the time of his appointment (about April 18, 1865) to January 1, 1866, at the rate of thirty-five hundred dollars ($3,500) per annum, and at the rate of one hundred dollars per month from January 1, 1866, until April 1, 1866, the date of his resignation.

Cross-interrogatory eighth. If you say John F. Topping was employed by defendant state how you know, by whom, and from where you derived your information.

529 Ans. M'r Sabin told me that when he left Colorado John F. Topping was in possession and had the supervision of the defendant's property, and M'r F. A. Potts, treasurer of the defendant, said he had engaged him to take charge of the property of the defendant.

Cross-interrogatry ninth. State how long Sabin was employed in attending to the mine and mill of the defendant, & how much, if any, gold or money was remitted by him to the company or any of its officers, and when such gold or money was remitted, and how often, if ever, did Sabin make reports to or correspond with the company or any of its officers.

Ans. M'r Sabin was employed in attending to the mine and property of the defendant from about April 18, 1865, until he resigned, and John F. Topping was employed, which was about April 1, 1866. I have stated the amount of his (Sabin's) remittances in my answer to the last direct interrogatory. My answer to the said interrogatory also gives
530 the amount of his remittance and expenditures in the aggregate from the time of his appointment on the 18 day of April, 1865, to the date of his resignation, about April 1, 1866. I do not know how often he made any reports, (if he made any.) His letters were directed to Edwin Croswell, esq. I do not know of his corresponding with any other officer of the defendant.

HENRY BREVOORT.

STATE OF NEW YORK,
City and County of New York:

I, Charles Nettleton, of the city and county of New York, in the State of New York, a commissioner, duly appointed to take the deposition of the said Samuel Bonnel, j'r, and Henry Brevoort, witnesses, whose names are subscribed to the foregoing depositions, do hereby certify that previous to the commencement of the examination of the said
531 Samuel Bonnel, j'r, and Henry Brevoort, as witnesses in the said suit between the said Rocky Mountain National Bank of Central City, Colorado, as plaintiff, and Union Gold-Mining Company, of Colorado, as defendant, they were duly sworn by me to testify the truth in relation to the matters in controversy between the said parties, so far as they should be interrogated concerning the same; that the said depositions were taken by me and reduced to writing by William C. Lusk, a clerk in my office, in my presence and under my direction, at my office, No. 117 Broadway, in the city of New York, in the county of New York and State of New York, on the 27th day of September, A. D. 1871, and after such depositions were taken by me, as aforesaid, the interrogatories and answers thereto as written down were read over to the said

witnesses, and that thereupon the same was signed and sworn to by the said deponents, Samuel Bonnel, j'r, and Henry Brevoort, before me, at the place and on the day and year last aforesaid.

And I further certify that the said William C. Lusk is not
532 in any way, directly or indirectly, interested in this suit or in the event thereof. In witness whereof I have hereunto set my hand and affixed my official seal.

[SEAL.]

CHARLES NETTLETON,
Commissioner for Colorado in New York,
117 *Broadway, New York City.*

Commissioner' fees for taking the foregoing depositions were $30.50. Paid by defendants.

CHARLES NETTLETON,
Commissioner.

George H. Potts, Samuel B. Hord, and John H. Keeler not appearing before me, as I am informed by reason of their absence from the city of New York, I return this commission without their testimony.

CHARLES NETTLETON,
Commissioner.

Defendant then called JOHN MELLER, who was sworn as a witness, and testified as follows:

533 "I am a miner; have been for 30 years; know the Bates mine in Gilpin County. I know where Rocky Mountain National Bank is; know the bank; know George K. Sabin; he came back from the east some time in the fall, November or December, 1866, and I met him in November or December, 1866. I had conversations with him in regard to the Bates mine. Mr. Sabin came down to our house one evening at dark and asked if I would go to work with him or for him on the Bates as foreman, and he says to me, 'You and I will have to wait till we get our pay out of the mine,' and asked if I was willing to do so. I studied over the thing a few minutes and said I would. I went to work in the morning and worked a month or so and wished to quit; told M'r Sabin I did not think I could make anything; he was anxious I should keep on; said it would all come out right.

"I worked along for him till May or June; don't know just
534 when, and he then paid me one thousand and sixty-nine dollars for wages, and after that he paid me right along, as long as I worked for him. This was the first payment I got; that was in 1869. I have stated all the conversation I recollect."

Defendant here asked witness this question: "From your contract with M'r Sabin, for whom were you working at that time?"

(The plaintiff objected to the witness answering, the court sustained the objections, and defendant then and there excepted to the ruling of the court.)

Defendant then asked witness: "For whom did he employ you to work?"

(Plaintiff objected to the witness answering, court sustained the objection, and defendant then and there excepted to the ruling of the court.

On cross-examination witness Meller, testified as follows: "I worked there 18 months."

Plaintiff asked witness this question: "What time did you quit?"

(The defendant objected to the witness answering, the court
535 overruled the objection, and defendant then and there excepted to the ruling of the court.)

Witness then answered, "I believe I worked there 18 months, and began December 15th. I don't know just what day I quit."

Plaintiff then asked the witness, "How was that $1,069 paid you?"

(Defendant objected to witness answering, because nothing was asked about it on direct examination. The court overruled the objection, and defendant then and there excepted to the ruling of the court.)

Witness then answered, "Mr. Sabin drew a check, carried it to the bank, got the money, and handed money to me. He used to draw a check in my favor, and go & get the money and hand it to me, and I pay the men. I have no doubt there were checks drawn to me and delivered to me sometimes.

"My salary was seven dollars a day. (Check shown witness.) I don't think that was for my pay alone; it was for all the men at the mine. These were generally for labor for all of us. He gave me the money for myself and the balance of the boys. I gave him my time-list; he
536 made it up, and gave me the money to pay all. I always took my pay out, after the first time—after the $1,069.

"Sabin never missed paying, as I recollect, after the first pay was given. Sabin generally handed me the money at the office on Lawrence street. There was a man by the name of George Meller and one by the name of Sam Meller worked there."

Plaintiff here asked, "What did you give Sabin when you got this money or check, whatever it might be?"

(Defendant objected to witness answering, because not cross-examination. Court overruled the objection, and defendant then and there excepted to the ruling of the court.)

Witness answered, "I always signed a receipt for it."

Plaintiff here asked the witness, "Do you know to whom the receipt run—in whose name was it taken?"

(The defendant objected to the witness answering. The court overruled the objection, and defendant then and there excepted to the ruling of the court.)

537 Witness then answered, "I don't know who it was drawn to; it was in a regular book. I suppose I read them at the time. I could not be positive as to who the receipts were to, the Union Gold-Mining Company or to Sabin. I think it was to the company; am not positive. Receipts were given once a month; pay never failed; as foreman I did anything I could to keep the work along; saw that everybody else worked as hard as they could, and did so myself. I was mining, of course."

On redirect examination, witness Meller testified as follows:

"I think M'r Sabin got the money on the checks. They were payable to myself or bearer. Sabin always brought the money to the office on the 1st day of the month. Sometimes the bank wanted to make up their account and put it of a day or two from the first of the month. He brought it to me in curreney. There may be one-half or more of the checks that I never saw. I don't know that there is a single check that I could identify."

538 JOHN RANK was called by defendant, sworn as a witness, & testified as follows:

"I resided in Central in 1866. I was engaged in hauling ore. Knew the Bates mine. Know George K. Sabin. Did know him in fall of 1866,

& long before that. I had dealings with him in fall or winter of 1866. Commenced carting ore in January or February, 1867, from Bates mine. I had a conversation with M'r Sabin, early in 1867, in regard to the manner of working that mine. Sabin wanted me to cart the ore as low as I could; that he had to make the mine pay its own expenses, & could not run the mine in debt. That was about all of it. I hauled ore to Kip & Buel's mill, Lyon's furnace, to New York Mill, to Black Hawk Mill, & Douglass Mill. N. B. Hayes was in charge of Lyon's furnace when I hauled there. Sabin said to me that he could not run the mine in debt at all; had to make it pay expenses. He told me so before I hauled to Hayes, & afterwards. When I hauled to Lyon's he said Lyon's furnace realized more than the stamp-mill, & had helped him out."

539 On cross-examination, witness Rank testified as follows:

"I commenced hauling ore in January or February; it may have been before or after. I hauled timbers as well as ore. Think I hauled ore till November or December, 1868; was paid for hauling in checks. I hauled this ore for George K. Sabin, on his account. He paid me."

Defendant here called CONRAD ELLIOTT, who was sworn as a witness, & testified as follows:

"In 1865 & 1866 I resided in Chase Gulch. Know the Union Gold-Mining Company's mine on Bates lode. Know George K. Sabin. I knew Sabin connected with the mine in 1865; could not tell exactly the date; some time after Mallory left. Can't tell positively what time in 1865 the work was closed on that mine; think it was in the winter. Think there was no work done in winter of 1865; none done in 1866. I know of Sabin's going east in the spring of 1866. Don't think there was any mining done from fall or early winter of 1865 up to the spring of 1866. None done when he when east. Sabin was acting as
540 agent in the winter of 1865 & 1866.

"Sabin went east in the spring of 1866. Don't know what time of the spring. I believe as M'r Topping looked after the interests of the company while Sabin was gone, & until October, 1866. When Topping quit I took charge of the property until Sabin returned. I had orders to take charge of it. I took charge & went over & told M'r Topping so. Took charge of everything. Moved everything out of the office & over to Chase Gulch. Took the sign down; took the books out; took papers, everything else, & rented out the office. Took the hings over to Chase Gulch & locked them up in a cabin.

"Sabin returned, I think, in the latter part of November, 1866. I had charge of the office & property of the company. I had rented it all out, & it was rented out when Sabin returned; the office up-stairs, the old mill—all rented, & were rented a month after Sabin returned. The office was rented. I put the sign over in the cabin in Chase Gulch with the books & papers.

541 "When Sabin came back he came to my house & asked me for the key; said there was a shutter off the engine-house; if I would give him the key he would go & put it on. I said very well, & asked him if he was going to run the mine. He said he did not know; that if he did he would not run it for the company, but would run it on his own hook.

"He took the keys & promised to return them, & never did return them. Sabin commenced work on the company's mine. I went over a

week afterwards; maybe longer. I asked him if he was starting up; he said 'Yes,' I think; 'I am starting it up on my own hook or responsibility.' He generally made that remark. Soon after that Sabin came over to Chase Gulch with a wagon & team; I believe I was in Central at the time. He went to my wife; she gave him the key of the cabin; he took the things out & took them away.

"I think this was a month or six weeks after he had started up. It was about three months from the time I took the sign off the door
542 & locked it up till Sabin was back there in that manner; maybe a little over 3 months. I was employed by Sabin during the time he was carrying on that mine in 1866. Becker returned here in the fall of 1868; I think the first of September—I think so. I never went to Sabin after the keys."

On cross-examination witness Elliott testified as follows:

"I have testified twice on this case before. I can't say positively whether I testified on a former trial of this case that Sabin said he would not work the mine on account of the company, & that he would work it on his own hook. I might have testified before that Sabin said he would start it under the new arrangement. I considered that the same thing.

"I now say that he said he would not work it on account of the company. He always told me so—told me so before he went east. I don't remember whether I ever testified to those words before; I meant
543 the same thing. I would not be positive whether I testified just so before. He said positively that he would not work it for the damned company; he seemed to be mad at the company.

"Sabin did not get the office for five or six weeks after he commenced work, for I had rented it to Col. Marshall. When he moved out, Sabin took possession; then he went and got the things & took them back. He did not go into the office until he had moved everything out of the cabin. Can't tell how long he lived in the office before he put up the sign. I took the desk, chairs, table, bed, bedstead, & sheeting, & pillow-cases over to Chase Gulch—no safe there; only one desk, sign, spittoons, &c. I don't know how long I worked there. Nearly all summer—the summer of 1867."

Defendant here called THOMAS THOMPSON, who was sworn as a witness, testified as follows:

"I know Union Gold-Mining Company—Bates mine. Know George K. Sabin. I first knew him in connection with the mine in 1866 or 1867; he superceeded Col. Mallory. I was employed there during the year 1865 running the engine & brakesman. Work closed on the mine
544 some time in the fall, I think. I think there was no work done on the mine in the winter of 1865–'66. Sabin said he had been east in summer of 1866; I was not east to see. I know of his being away from here. Can't say what time he went; he returned in 1867, I think, or in 1868; I won't be positive.

"On his return, I had conversations with him in regard to starting up the Bates mine. He came to me & wanted me to go & look at the mine with him. We went down as far as we though' safe to go. I went down to the water. He wanted to know what I thought about water coming into the mine; whether there was any coming water or not. I said I did not think there was. I asked him if he intended to start it up, or if the company was going to start it up; he said if he started it he should do so on his own hook.

"Then he wanted to know of me if I was willing to take my chances with him & wait for my pay till he could take it out. He said he was going to work on his own responsibility, & he warned me that I
541 must not look to the company for my money, provided he did not take it out of the mine. Then he went on to state what he was going to do: that he was going to work the mine on his own hook, as he termed it; that he was to pile up the first-class ore for the use of the mine. I told him I would take my chances and wait on him till he took it out. Then he told me to go to work & get the machinery ready for working, and I did so & worked there as long as he worked—till he quit."

On cross-examination, witness Thompson testified as follows:

"I can't tell how long Sabin worked nor when he quit. I worked there during the time Sabin was there, & I think a few days afterwards. I suppose it was Becker working it after Sabin quit. I think this was in the fall of 1868. First-class ore is what we now call hill-ore, smelting ore; ore that is clean enough to smelt."

Plaintiff here asked witness,

"Who paid you?"

(The defendant objected to witness answering, because not proper cross-examination; but the court overruled the objection, &
5441/2 defendant then & there excepted to the ruling.)

Witness answered, "M'r Sabin paid in checks mostly; sometimes at the office & sometimes he brought them down to the mine. Checks were drawn mostly on the Rocky Mountain National Bank."

Plaintiff here asked witness, "How were those checks drawn, (witness shown checks;) like those?"

(The defendant objected to the witness answering; the court overruled the objection, & defendant then & there excepted to the ruling of the court.)

Witness then answered, "Yes, sir; I presume they were. It would be pretty hard to tell whether the checks I received were of that kind. I sometimes told Sabin to get the money & bring it to me, & sometimes I took the checks, when checks were delivered to me. I presume they were made in this way. I was paid once a month generally, except the first, some four or five hundred dollars. He was owing me before he paid."

Plaintiff here asked the witness, "When you received any pay, did you give any receipt?" to the answering of which by witness
545 defendant objected: the objection was overruled by the court, & defendant excepted then & there to the ruling of the court.

Witness answered, "I used to sign a receipt-book. I do not remember to whom the receipts were drawn; can't state. I presume the receipts were drawn to the Union Gold-Mining Company. The checks were drawn in that way. I presume I worked 8 or 10 days after Becker took charge of the property. I was blacksmithing when not attending to the engine; blacksmith—sharpening tools, &c. I could not swear to M'r Sabin's handwriting.

"When I received checks, it was sometimes at the office & sometimes Sabin brought them to me at the mine. I testified in this case before. I do not remember testifying that Sabin said he had made arrangements with the company to start the mine, but was not to draw on the company. He said he was going to work, & was not to draw on the company."

On redirect examination witness Thompson testified as follows:

"I received the 400 or 500 dollars after I had worked there
546 three or four or five months. I worked there four months before I drew my money at all. I can't say certain how I received that first pay. I think, though, it was in money; I am pretty certain that it was. My wages varied from six to seven dollars per day.

The defendant here called GEORGE T. CLARK, who was sworn as a witness & testified as follows:

"I am treasurer of the Territory, & secretary of the board of immigration. Up to 1st October, 1866, I resided in Denver; after that in Central City, & stayed there till first of October, 1869. Was in banking business in Central City. I know the property on Bates Lode called the Union Gold-Mining Company's property. I was acquainted with George K. Sabin in 1866; he did business with me that year at the bank.

"I went to Central City 1st October, 1866. Sabin came into the bank some time in October or November, can't say exactly, & said he wanted to get a thousand dollars: that he was going to start up the Union
547 property, as we had talked in New York, & we let him have the money: took his check for it. He said he wanted it to open the Union Company's mine; had to buy some supplies, or something of that kind. I don't recollect the exact conversation; it was a general conversation, in which he wanted a thousand dollars to buy some supplies, &c., & I think that he owed Mr. Hense some money that he had got of him to start up with. Before I came up there he wanted to pay him some, & wanted to buy some mining-supplies—steel or powder. Was going to work on the property; he had been down in the mine & it looked all right. That is about the general character of the conversation.

"I took his check on George T. Clark & Co. I had two other transactions of that kind with Sabin; he sold me some gold, but he did not do a regular business with George T. Clark & Co. He paid back the amount, I think, in the course of 30 days—the $1,000.

"The transactions at our bank were with George K. Sabin. My impression now is that the check was signed, 'George K. Sabin.' He
548 continued to do business with us in that way; it might have been for sixty days. We oftentimes let him have money, and he would sometimes bring in gold when he cleaned up; maybe a dozen transactions after these transactions with our bank. He did business at the Rocky Mountain National. J. H. Goodspeed was cashier of that bank then, after Sabin commenced doing business with plaintiff.

"I had general conversations with Goodspeed in regard to how Sabin was doing, how the mine was looking, what kind of ore he was getting out, how big a run, how big a retort, &c. The statement' made by Goodspeed were generally that 'Sabin got out a retort this week, going to do well, wished more of them would start up, that Sabin would make a good thing out of the company's property, & if eastern companies would let more men take their property in that way it would be better for the country.'

"We had that kind of conversations perhaps a dozen times. In the spring & part of the summer of 1866, I was in New York City.
549 I met Sabin there in the spring of 1866. I had conversations with him in New York in the spring or summer of 1866 in regard to starting up defendant's property."

Here the defendant asked the witness to "State what they were."

Plaintiff object' to witness answering, and the court sustained the objection.

Defendant excepts then & there to the ruling of the court.

Defendant then asked witness to "state if Sabin made a statement to you in the city of New York in regard to his resignation of the position he had held formerly."

Plaintiff objected to witness answering, the court sustained the objection, & defendant excepted then & there to the ruling. I saw Sabin once or twice a day for two or more weeks in New York.

On cross-examination, witness Clark testified as follows:

"In my conversation with Goodspeed we did not compare the management of Sabin with that of Mallory. Our conversations were general in regard to the management of the mine, making it pay, &c.; there was something said in reference to Mallory, in which I said Mal-
550 lory had the ore all in shape, & all Sabin had to do was to take it out. The conversation was that he was a good manager to man age the mine."

EBENEZER SMITH was then called by defendant, sworn as a witness & testified as follows:

"I resided in Central City in 1865 & 1866. I was mining, & I was engaged in banking to some extent with M'r Clark; the firm was George T. Clark & Co. Know defendant's property on Bates lode. Know Sabin; know of his having been away in 1866; he returned some time during the summer or fall. I had conversations with him after his return in regard to his starting up the company mine. My recollection is that he told me he had made an arrangement to work the mine with the company.

"I cannot remember the exact language, but he said he had made an arrangement to start the mine, & would have to have some money in order to do so; that he needed some; & asked me if Clark & I could accommodate him; that if he had money he thought he could
551 make some money out of it. He stated to me that he was to start the mine on his own account. We loaned him the money to aid him in starting the mine. I think Sabin did business with our bank for two or three months; that is my recollection; he had an accommodation. I don't know what shape it was in, whether overdraft or note; the business was done in his own name, George K. Sabin; don't know where he did business after he left us. He first got money of us & then sold us gold. Can't state just the time he commenced. I should think about the 1st of September or first of fall; it might have been later or a little earlier; think it was as late as that.

"I had subsequent conversations with Sabin after the mine was started. We lived right side by side, & frequently met, sometimes in the street in front of my house & sometimes in the stable; were intimate; together a great deal, and I presume sometimes in the bank. We had conversations in regard to what he was doing, his product of
552 gold, first-class ore, &c., & the general business of the mine. I don't remember any particular conversation; I had a great many with him in regard to the yield of his mine, how much he was making or thought he was making.

"In some of those conversations he made statement' to inform me as to who was doing the business. He said that he wanted to get money to start the mine on; as I understood it, Sabin, for himself, & on his own account. The only particular conversation as to what he said he was

going to do or was doing was at the time he asked for this money, that he had made an arrangement to start the mine with the company, to work their mine, & that he wanted some money to assist him in starting the property up. That is the only particular conversation I can remember. I have been about the mine; have seen ore piled up there frequently. I had conversations with Sabin in regard to that ore; he said the ore belonged to the company, not to him. At the time I talked with him about sending it to Hill he said that that was what he
553 had to pay for tribute to the mine, first-class ore. That is my recollection."

On cross-examination, witness Smith testifies:

"I am pretty distinct that he said that was what he had to pay for tribute; it was after some first-class ore had accumulated. I was only here to hear a part of the other trial. I won't say he used the word tribute; he said it was what he had to pay the company. I think it was in the summer of 1867, from the quantity of ore accumulated; this conversation was in the ore-house. I was there afterwards up to the time he quit; these other conversations took place usually near our houses. I don't think I was ever in the company's office but once; think we never had any conversation there. I have had no conversation with Becker about it since the last trial, except he made two or three remarks this morning since coming in court.

"I never was in the mine that I remember of. I may have said at last trial that I never visited the mine with Sabin. I don't remember that we ever went down from our places in company. I went to
554 the mine frequently when he was there. I do not remember whether I so testified."

On redirect examination, witness Smith testified as follows:

"I do not remember that I was questioned on this tribute ore on the former trial."

THEODORE H. BECKER was then called by defendant, sworn as a witness, & testified as follows, (paper shown witness:) "That is a certified copy of the certified copy of the certificate of incorporation of the Union Gold-Mining Company of Colorado & the act for the formation of corporations in the State of New York. I obtained them at the clerk & recorder's office in Gilpin County. It is the certified copy of original certificate filed there under the statute."

Here the defendant offered in evidence the certificate of incorporation, & law of the State of New York under which it was formed, spoken of by witness Becker. The plaintiff objected, and the court sustained the objection, & defendant then & there excepted to the ruling of the court.

The defendant offered in evidence a copy of the general incor-
555 poration act of the State of New York, certified by the secretary of state as an authenticated & verified copy of the general incorporation act & laws.

The plaintiff objected, the court overruled the objection, & defendant then & there read the same to the jury; which is hereto attached & marked "Exhibit A."

THEODORE H. BECKER then testified as follows:

"I know defendant; have known it since its organization, some time in 1863, in New York City, State of New York. It was incorporated under the general act of the State of New York. I was director in defendant corporation from its organization till April, 1867; then I

was elected president. Prior to my being elected president I was a member of finance committee. I was vice-president in 1866; was member of finance committee in 1866.

"The duties of the finance committee of our company was to pay all bills, or rather see that all bill' are correct before they were ordered paid, & to make any arrangements about expenses. Bills for rent, & everything that pertained to the company, would come before the
556 finance committee, & be reported on by it before the treasurer was permitted to pay any claims against them. This finance committee has been in power since the organization of the company.

"I know M'r Sabine; some time in the spring of 1865, I think in April, M'r Sabin was appointed special agent or superintendent; he remained in that position till about the 1st week in April, 1866."

Defendant here asked the witness to state what were his duties under that appointment.

The plaintiff objected to witness answering; the court sustained the objection, & defendant excepted then and there to the ruling of the court.

"The company was engaged in actual mining operations from some time in April, 1865, till the following September. No work was done on the company's property from that time till April, 1866. M'r Sabin's connection with the company terminated by his making a written report. I was then, at the time, in New York. He came on to New York, made a written report, & resigned; his resignation was accepted.

557 "This resignation was in writing. (Paper handed witness.) I do know the handwriting of M'r Sabin. This is M'r Sabin's signature. I have seen him write. This paper is a report & resignation. I think I first saw it the 2d day of April; it is dated the 3d. It was prepared in my room a day or two before it was delivered to the company. It was prepared by M'r Sabin; the body of it is in Sabin's handwriting. M'r Sabin gave it to M'r Croswell, the president of the company, in the office of the company, No. 110 Broadway, New York. I am not sure, but I think it was the 3d day of April, the date it bears, I obtained it from the office of the company; think it was before the first trial, some time in 1871. I saw that identical paper delivered by Sabin in the office of the company about the time it bears date. It is in the same condition now that it was in when delivered to the company; there may be more blots on it now.

"This erasure at the bottom of the page was there at the time of its delivery to the company. (The document was here handed to the
558 court to be marked.) I was in New York in fall of 1866. Sabin was there occasionally during the summer & fall; he came to Colorado in the latter part of October or November. During the summer I received a letter from him at Troy, New York. He was in Vermont a part of the time & in North Carolina.

"He was not in the employ of the defendant after April, 1866. He has never been employed as agent or superintendent of defendant since about April 3d, 1866. There was an arrangement made between Sabin & the officers of the company in regard to working the company's mine. There were a great many conversations & talks; there was a verbal arrangement.

"Sabin represented that he could run the mine without it costing the company anything, and would run it if he found the mine in as good condition as when he left it. There was nothing really obligatory; he did not bind himself to do anything at all; simply a verbal arrangement. He agreed to come to Colorado and examine the mine, see what

559 condition it was in, & if it was in as good condition as when he left it that he would go to work & lay the company up the first-quality ores for the use of the mine, that is, for the rental or use, & run the mine on the second & third quality ores.

"They were, of course, very cautious. The company did not want to spend any money on the mine. The arrangement was that he was not to contract any debts or draw on the company. At that time we understood that there was a lien law, & we were particular about that. Stated he was to run the mine on his own account; not incur any responsibility to the company at all; he would run the mine on his own merits—on his own hook; something of that kind. This was a verbal agreement. All of us were there. It was made principally with Potts. I was there, M'r Bonnel, & M'r Brevoort. M'r Potts, M'r Potts' father and brother, was there occasionally. I have enumerated all the officers of the company that were present.

"There was no binding agreement by which he was to commence work. Sabin left New York. These conversations occurred at several
560 times when he was in New York. I don't know the exact time he left New York. He left shortly after the arrangement was made.

"He commenced work. I first learned of his being at work, I think, in January, through M'r Elliott. The next time was by a letter from Sabin himself. It was some time in January, or first of February, before I got a letter from Sabin about it at all. I have the letter, but don't know where it is. I returned to Colorado in May or June, 1867. I know how Sabin was furnished with funds in 1865. The first money sent him was a certificate of deposit, with instructions what to do. After that they ordered him to send the gold on & they would send him the money in return for it."

Defendant here asked the witness to state whether, during the time he was superintendent, in 1865, he was authorized by defendant to keep any bank-account in its name.

Plaintiff objected to the witness answering. The court sustained the objection, & defendant then & there excepted to the ruling.

Defendant then asked the witness to state whether during the
561 time that Sabin was superintendent, during the year 1865, the defendant kept a bank-account in Colorado.

Plaintiff objected to witness answering. The court sustained the objection, & defendant excepted to the ruling of the court.

Here the defendant offered to prove by witness Becker that during the time that Sabin was agent of the company, in 1865, no bank-account was kept by either defendant or Sabin in Colorado in the name of the defendant. The objected to the proof, the court sustained the objection, & defendant then & there excepted to the ruling of the court.

"All except the first-class ores was to belong to M'r Sabin under that arrangement. I have testified *to* M'r Sabin was not to receive any compensation from the company for his services—not a cent. No compensation was talked of ever. If he worked the mine at all, the second & third class or mill ores he was to use in any way he pleased, and put by the first-class or smelting ore.

"I returned here the latter part of May or first of June. I was here a few weeks—not long—at that time. Sabin was working Nos. 1
562 & 2 on the Bates; had laid up some first-class ore, & was milling the mill-ores. A little first class had accumulated there in a corner of the engine-room, I suppose about six feet high—higher than my head standing up. I have no idea of how many tons. I suppose 30 or 40; a little bunch of it.

"There was no other arrangement made between October or November, 1866, & 16th December, 1869, between Sabin & the company, or any officers of the company, in regard to working the mine. I was around Central two or three weeks that time, & in Denver awhile.

"I again returned in December, 1867. Some time during my first visit out in 1867 I wanted Sabin to work my claim number three on the Bates lode, & I made an arrangement with him. I was to furnish him the use of mine & mill for developing No. three on Bates. I had a good long talk about his condition. He was to develop No. 3, fix up my mill, I put it in good order, pay all expenses. He went to work, fixed
563 my mill up, or had it done under his directions, & paid for it. I paid for it. He was to go to work on my number three & develop it & give me the first-class ore and use the mill-ores himself. That arrangement was made when I first came out in 1867. Under the arrangement, claim number three west was developed.

"Sabin run a drift in it between 90 & 95 feet, & stoped out the ores above, & then run in a second drift & made a second stope. The stopes did not run the whole distance of the levels. The stope was less than 80 feet in length in one place & less than 60 in another. I don't remember the height; I think at least 40 feet. I think Sabin commenced to work on No. 3 west in January, 1868.

"Defendant did not own a mill in Colorado; it had some mill-machinery, but no mill. Sabin commenced to run my mill some time in summer of 1867. M'r Sabin then owned the west half of Discovery Bates lode. I don't know when he became the owner. He told me, when I came out in 1868, that he had bought it.

"After Sabin's purchase of that claim he worked through it'
564 whole length, so we could walk through from one claim to the other, that is fifty feet. That work must have been done in 1868.

"I came back to Colorado in December, 1867, & stayed about four weeks. Claim No. 3 west & west half of Discovery were worked from the property of the company. You went down the company's shaft, & then worked east and west, from the workings of the company eastward, through west half of Discovery, & westward through my claim No. 3. The hoisting was done through the property of defendant.

"When I returned, in December, 1867, Sabin was working on Bates lode. At that time he estimated there was 200 tons first-class ore piled up there. There was in the neighborhood of twenty cords of ore; it is variously estimated at from 6 to 8 tons to the cord, sometimes 10 tons.

"I next returned to Colorado in latter part of September; think I got up to Central about first of October, 1868. Sabin was still working on number three, & think he was stoping on west end of No. 2. At
565 that time the pile of first-class ore had increased fifty per cent. There was in the neighborhood of thirty-two cords at that time. A portion of it was entirely separate; it belonged to me as tribute from number 3 west, & then the balance was mixed. There was probably 2 cords, separated from the balance, that belonged to me; the balance was mixed. I could not say anything about that.

"I first knew that Sabin was doing business in Colorado in name of defendant on the 16th of December, 1868. I notified company on the 16th, the day I heard of it. It took letters in those days about ten days to go. I got an answer upwards of three weeks afterwards.

"I notified the company through the vice-president, M'r Werner. I first had knowledge that plaintiff claimed an indebtedness from defendant on 16th December, 1868. M'r Sabin told me at supper-time that he was behindhand at the bank. A little while after that M'r

Potter came in. M'r Sabin had left my boarding-house & started
566 towards town & met Potter; they got together some way. Potter told me of it; told me the debt was contracted in the company's name. I am not sure what he said the amount was. He wanted me to deposit ten thousand dollars 5-20 bonds. I think Potter told me the amount was fifteen or sixteen thousand dollars. I am not sure it was not as large as it turned out afterwards. I notified the company that night; I told Potter I would write them. I wrote to M'r Werner. (Here witness was handed a letter.) This is my signature; I wrote this letter; the body of it is in my handwriting; I got it at the office of the company, 110 Broadway, when I got the report & other papers & letters; I think it was in 1870.

"I am not sure I received a reply from M'r Werner. (Here witness was shown another letter.) This is M'r Werner's signature; I know his handwriting; I have seen him write. This letter was received by me some time in January, 1869; I think the first or second week.

567 "I wrote on 16th December, 1868. This came about three weeks after. (Letter handed court to be marked.) I wrote to the company again some time in January, through M'r Werner. It was after I received this answer. (Another letter shown witness.) That is my signature. I wrote this letter to M'r Werner. I got it from the office of the company in New York the same time I got the other papers. I received an answer to this letter. (Another letter shown witness.) This is M'r Werner's handwriting.

"I received that letter in March some time—the first or second week in March. I read part of both of those letters received from Werner to M'r Goodspeed, & told him what they contained. I told M'r Potter I would write to the company, & of course when I got an answer I told them what the answer was. I promised Potter I would write when he first told me about it, the 16th December. I told them the contents of these letters within a day or two after I received them—I told M'r Goodspeed."

568 Here the defendant offered in evidence the four letters last mentioned, & read them to the jury, as follows:

CENTRAL CITY, COLORADO,
Dec. 16, 1868.

J. M. WERNER, Esq.,
V. P. Union G. M. Co., New York City:

D'R SIR: Please see M'r Potts and our board and ascertain if any new arrangements have been made with M'r Sabin, giving him authority to draw drafts or contract debt *or* in the name of the company, &c. One of the clerks of the Rocky Mountain National Bank has just notified me that M'r Sabin has made overdrafts at their bank for some sixteen or twenty thousand dollars in the company's name. Has anything new been done since I left N. Y. in April last?

Please answer immediately, & oblige,

Your ob't se't,

T. H. BECKER.

569 OFFICE OF THE UNION GOLD-MINING CO. OF COLORADO,
110 *Broadway, New York City, Dec.* 26, '68.

T. H. BECKER, Esq.,
President of the Union Gold-Mining Co. of Colorado, Central City:

DEAR SIR: Your favor of the 16th inst. came by to-day's mail. We have had no communication whatever from M'r Geo. K. Sabin.

In fact, we have had no meeting of the company since the election in April last. The contents of your letter astonished all of the directors I have spoken to. M'r Sabin has no authority whatever to draw any drafts on, or in the name of, the Union Gold-Mining Company of Colorado, or to contract any debts in their behalf.

When are you coming on ?

Very resp'y, yours, &c.,

JAS. M. WERNER,
Vice-Pres. U. G. M. Co. of Col.

570 CENTRAL CITY, COLORADO,
January 26th, 1868.

J. M. WERNER, Esq.,
Vice-President U. M. G. Co., New York:

D'R SIR: Please call a meeting of our board of directors, & tell them that I have agreed to spread the overdraft of M'r Sabin's before them.

The bank claims that M'r S. overdrew his account in the name of the Union Gold-Mining Company, & used the money d' in their mill. They certainly look to the company for payment, & say the co. got all the benefit, &c. I read your note to the cashier, M'r Goodspeed: he says he thinks the company should pay it. I told him M'r Sabin had transcended his authority, & I ordered them not to let him have a dollar on the compan*ie*'s account. I herewith enclose you the amount of their claim, &c. I assure you that no one was more astonished than I was when I first heard of this overdraft. I did not know
571 one word of it until 16th December, the day I last wrote. Have the board directors say & direct what I shall do, & write me the result as soon as possible after the meeting, & oblige,

Your ob't s'v't,

T. H. BECKER.

Witness Becker testified:

"This letter was written a few weeks after I received the first reply from Werner, in January, 1869, & is in answer to that one."

OFFICE OF UNION GOLD-MINING CO. OF COLORADO,
110 *Bdw., New York City, Feb'y* 25, '69.

T. H. BECKER, Esq.,
President Union Gold-M'g Co., Central City, Col.

DEAR SIR: The directors say that M'r Sabin's actions are so contrary to the arrangements & agreements made with him in the fall of 1866, that they cannot recognize his acts, & that the matter must be presented to the stockholders at the annual meeting of the company
572 in April. They decline to do anything whatever.

Please notify M'r Sabin's creditors at once of this.

Y'rs, resp't'f'ly, &c.,

JOS. M. WERNER,
Vice-Pres. U. G. M. Co. of Col.

Witness Becker then testified:

"I could not say what portions of these letters I read to M'r Goodspeed. He was constantly called out. They were constantly mentioning the fact about the debt in short conversations. I told Potter I had notified the company. Goodspeed asked me if I had heard from the company. I told them, 'Yes, they had repudiated the debt: it was

a matter that would have to be spread before the stockholders.' The directors would not recognize anything or have anything to do with it all, hence the agreement was that I should go on & have the stockholders meet. It was generally understood. I promised M'r Goodspeed & M'r Kountze I would go on. I think they all understood that I would go on, call a meeting of the stockholders, & spread the matter
573 before them.

"The representations to me were that Sabin had authority. I stated to Goodspeed that I would go on & attend the regular stockholders' meeting & spread the matter before the stockholders, & I did so."

The court here ruled that the two letters from Becker to Werner were not admissable in evidence, & the defendant then and there excepted to the ruling of the court.

"I notified the company of this affair, as I had promised; did so by these letters, & afterwards, then I notified the plaintiff that the directors would have nothing to do with the matter some time during the first part of January, directly after I got the reply from Werner. Had great many conversations with the plaintiff about this matter. I refused to do anything until I heard from the company. After I notified them that the directors would have nothing to do with it, I promised I would go on & spread the matter before the stockholders; their annual meeting was some 8 or 10 weeks after that, the first week in April.
574 I went on. There was a meeting of the stockholders; it was 1st week in April. I think the 1st or 2d day of April the matter was laid before them. (Here a book was handed to witness.) This is the book of minutes or records of the Union Gold-Mining Company; it was kept at the company's office in New York. I know some of the signatures to those entries to be correct. I knew M'r Werner & M'r Brevoort's. This is the only book of minutes of the company's meetings that I know of, or that I ever saw there; there were stock-books and ledgers. I got this book from M'r Potts, the treasurer of the company, a week or ten days ago."

Here defendant offered in evidence the report & resignation of Sabin, whereupon plaintiff asks witness Becker in regard to it. Becker testifies as follows:

"This paper is in the same condition that it were when it was handed to the president. I have testified twice before in this case. I remember this paper was in this condition because it was; really I don't
575 know what I stated on my former examination. That paper was prepared in my room. The wording of it is the same as it was when it was received; there may be more blots on it now. I was present when this was delivered to the company. We went down to the office together. (Witness' attention called to some blotting or erasures on paper.) I think that was done by some blotting we did on it in my room when it was written. I think I said on a former trial that I did not know when it was done, but M'r Sabin called my attention to it. I am not sure whether I said on my former examination that I did not know when it was done. M'r Sabin called my attention to the fact, & showed me the original. Something was said before about the color of the ink in the blot, but it has not been touched to my knowledge. The color looks to me just the same. I don't know. This blotting was done in my room before Sabin delivered it."

Here the plaintiff objected to the introduction of paper in evi-
576 dence. The court overruled the objection, & paper was read to the jury, as follows:

NEW YORK CITY,
April 3d, 1866.

Hon. EDWIN CROSWELL,
President Union Gold M. Co.

DEAR SIR: The only lodes belonging to your property on which there are any developments are the Bates, Bates Extension, Hunter, Mammoth, Nova Scotia, Dickenson, Clay County, & Stanberger; all of the above are more or less developed & stand A No. 1. Your Bates property is much more developed than the others, and although the ores from this lode do not yield as much by the stamp-mill process as some others, yet they show as rich by assay as any ores in Colorado, on an average. In my opinion, if the shafts on your property were securely timbered, and your engine, boiler, and stamp-mill placed immediately over the mine,
577 on claim No. 2, and a good Cornish pump so placed as to keep the mine dry, the ores could be made to more than pay expenses at once with the stamp-mill you have. The tailings could be securely kept on your mill-site for the most successful of the many new processes now building and in a forward state of completion.

It has already been demonstrated beyond a doubt that most of the Colorado gold and silver bearing ores are peculiarly well adapted for the smelting process of extraction. Messrs Ja's E. Lyon & Co. have been wonderfully successful in extracting large quantities of gold & silver by their process, which process I have examined, but as I could not see their books I cannot say positively as to the cost. Mr Lyon is now in New York, and I refer you to him for particulars.

I feel satisfied, from the many processes now being introduced in Colorado, that the day is not far distant when all the gold & silver bearing ores can & will be worked profitably. On account of the scaly condition of the walls of your Bates Mine, it will not be safe to work
578 them without first timbering them securely. Estimate cost of timbering, 6,000; estimate cost of grading mill-site on claim No. 2, & building foundation & cistern, 5,000; removing Fisher mill-building to site where proposed, 1,500; placing engine & boilers & stamp-mill all in working order, 2,000; total $14,500. Then put in a Cornish pump, and your claims can be made to pay more than expenses at once.

Your company's taxes have all been paid, and I know of no liabilities of your company in Colorado, save the account last rendered by me. I arranged your Col. matters before leaving Colorado, so that one hundred dollars per month will pay all expenses for taking care of the property until you can appoint a new superintendent. Hoping this report will meet with your approval,

I remain your obdient servant,

GEO. K. SABIN.

Here the defendant offered in evidence the book of minutes
579 of defendant corporation, to the introduction of which the plaintiff objected. Defendant offered in evidence the record of a meeting held April 18th, 1865, appearing on the lower part of page 18 of book of minutes, which is as follows:

"NEW YORK, *April* 18, 1865.

"At a called meeting of the board of trustees of the Union Gold-Mining Company of Colorado, held at their office this the 18th day of April, A. D. 1865; present the president, Mr. Croswell, & Messrs Potts, Booker, Dare, & Starr.

The executive committee reported they had found it imperatively ne-

cessary to change the management of the company's affairs at the mines in Gilpin County, Colorado, & that they had secured the services of Col. George K. Sabin, of Central City, to act as their special superintendent or manager to work their Bates Lodes in Central City. The executive committee thereupon submitted a paper or draft of a letter instructing Col. George K. Sabin what to do in the premises.

"Said instructions were then read, and on motion duly approved.

580 "On motion, which was seconded & carried, the president, M'r Croswell, was authorized to send a copy of said letter & instructions to Col. George K. Sabin, at Central City, as follows:

"OFFICE OF THE UNION GOLD MINING COMPANY OF COLORADO,
"*No.* 110 *Broadway, Room No.* 3, *New York, April* 18*th*, 1865.

"Col. GEORGE K. SABIN:

"D'R SIR: M'r Becker has submitted to our board your telegram stating that you will accept the superintendency of the Union Gold Mining Company of Colorado; so, without further preliminaries, they instruct:

"1st. On delivery of the enclosed letter to Col. Mallory he will place you in full possession of the books, papers, office, & properties of the Union Company, with a copy of all accounts & liabilities against the company.

"2nd. Stop all work except sinking one shaft on the Bates Lode,

581 but sink that shaft continuously and as speedily as possible through every cap until further advised. We expect you will soon find (if that has not been done already) at least 50 feet of paying ore.

"3d. We desire that all work, sinking shafts, &c., &c., shall be done by contract at so much per foot if possible, for our entire board are opposed to all check & pay rolls, and the contract system is far more satisfactory.

"4th. We desire a letter or report from you each week stating what progress has been made in sinking said shaft, & what kind of ore is passing through, width of crevice & width of iron, if any; also weekly expenses.

"5th. Send us full monthly reports of all our business operations at the end of each month, and from time to time write us any suggestions you may deem necessary for the company to know in relation to their affairs. Our M'r Becker contemplates being in Colorado in June, and will be authorized to make satisfactory arrangements with you as regards compensation, &c. He recommends you very highly to the company,

582 and says you will cheerfully obey all instructions of the company here, and conduct the affairs with the utmost economy, & see to our interests in Colorado promptly.

"In short, we are led to expect you will soon, if anybody can, make our mines pay. Let us have your views of the character & prospect of our mines at the earliest day. Hoping all may go satisfactorily,

"I am, very truly, your obedient s'v't,

"EDWIN CROSSWELL, *Pres't.*

"On motion of executive committee, it was ordered that the treasurer settle and pay the accounts of Col. J. H. Mallory to date, or up to the time he delivers up the premises to Col. George K. Sabin.

"Motion carried unanimously.

"On motion, adjourned.

"HENRY BREVOORT,
"*Act'g Sec't'y.*"

Whereupon, witness Becker testified as follows:

"I was present at the meeting when those proceedings were had. My name is there. That is a correct record of the proceedings at that time."

583 The plaintiff then objected to the admission of said minutes of proceedings. The objection was sustained by the court, & the defendant then and there excepted to the ruling of the court.

Witness's attention was then called to record commencing at the bottom of 26th page, & dated April 5th, 1866, & he testified in regard to it, as follows:

"I was present at that April meeting; the record shows it. The proceedings there recorded transpired at that meeting in my presence; it is a proper record of the proceedings made by Brevoort, the acting secretary.

"This record & the one I have testified to before were made by authority of the board."

Here defendant offered in evidence the record of proceedings last mentioned, dated April 5th, 1866, and is as follows:

Pursuant to call, a special meeting of the directors of the Union Gold-Mining Company of Colorado was held at the office of the company on Thursday, April 5th, 1866, commencing at 12 m., M'r Croswell in the chair.

There were present Mess'rs Samuel Quintard, Crosley, Becker,
584 Bonnel, Potts, & Croswell.

The chairman stated the object of the meeting was the election of officers for the ensuing year, which would be the first business in order.

A motion having been made and seconded that the board proceed to the election of officers for the ensuing year, M'r Croswell said: "It is well understood, I presume, that I am in no respect a candidate for re-election as president, having been one of the twenty-six persons who originally contributed the money in equal sums for the purchase of the property & for the capital of the company, & having devoted to the concern for two years past more time & attention than any of the contributors except the treasurer. I am glad to retire from the position. Both the treasurer & myself have performed our duties without receiving any compensation, conceding that till dividends could be made salaries must be deferred. Should the time come when stock-
585 holders can receive dividends it may be a question of equity how far these services are entitled to compensation in some form.

"Two causes have produced the present condition of the company, the early management at the mine and distrust and unpleasant feeling here. These causes, it is believed, are now at an end, & it is hoped united efforts will be made to resuscitate & improve the condition of the company. M'r Becker has stated repeatedly that he could make the concern pay in a few months, and I believe is prepared to submit a plan for that purpose, and one that is within the range of the balance in the treasury. If this be so, certainly we cannot devote it to a better purpose. It may be added, the late board avoided expenditures as far as possible consistently with the indispensible interests of the company, and that to this policy we owe our present unexpended balance in the treasury."

It was, on motion of M'r Quintard, resolved that M'r Croswell's remarks be placed on the minutes complete.

M'r Quintard moved, & seconded by M'r Crosly, that F. A. Potts

586 be re-elected secretary & treasurer, & Samuel Bonnell, j'r, for president, & T. H. Becker, vice-president; all of which were unanimously elected.

On motion, the following executive committee was appointed for the ensuing year: Geo. H. Potts, pres.; T. H. Becker & Samuel Bonnell, j'r.

The report from Geo. K. Sabin, esq., showing the present condition of our mine, & advising as to the future, together with his resignation, was read & received.

The treasurer was ordered to pay his bill for salary at the rate of $3,500 per annum to Jan'y 1st, '66, & at the rate of $100 per month to April 1st, '66. It was also ordered to stop all expenses here, give up the present office on May 1st, & get some cheap place to store the effects till more prosperous times arrives.

The treasurer was ordered to loan the funds of the company on best possible terms, with undoubted security as collaterals.

A motion was carried of thanks to the retiring superintendent.

587 On motion, it was ordered that the executive committee be authorized to accept the offer of Mess'rs L. Anduerrid & Co. to store the effects of the company at $100 per annum.

On motion, it was also ordered that the treasurer of this company pay the watchman (Mr. Topping) $100 per month for taking care of our property in Colorado.

On motion, adjourned until called by the president.

The plaintiff objected to the introduction of said minutes, because it is the same as to introduce the letters of the president. It would be in their power to fix this book months after the occurrences in such a way that they could be introduced, & yet nobody would be responsible or liable for perjury. They should be proved by the secretary who kept the books; and also because it is not the best evidence. The court sustained the objection, and the defendant then & there excepted to the ruling of the court.

Witness Becker's attention called to page 31, same book, to the minutes of a meeting dated April 5th, 1869, whereupon he testified as follows:

588 "I was present at this meeting; I went on to call it. This is a correct record of the proceedings at that meeting. This entry was made by order of the board."

Here defendant offered said record of meeting board directors, on page 31, dated April 5th, 1869, in evidence. Said record is as follows:

NEW YORK, *April 5th*, 1869.

T. H. Becker stated to the stockholders present that the Rocky Mountain National Bank of Central City had presented a claim to him of $21,860$\frac{67}{100}$ against the Union Gold-Mining Company, which they claim was made by George K. Sabin.

Mr. Becker also stated that Mr. Kountze, of Omaha, was one of the principal owners of the bank, & was now in the city, & would either call to-day or to-morrow & explain how said claim originated. The claim was then read, of which the following is a copy, to wit:

589 ROCKY MOUNTAIN NATIONAL BANK,
(Successors to Kountze Brothers,)
CENTRAL CITY, COL.,
March 19th, 1869.

This is to certify that we have received gold from the Union Gold-Mining Company & paid their checks to the following amounts:

1868. Jan'y 1. Am't due R. M. Nat. Bank					3,851 28
Jan'y. Bought gold		$7,388 20	Paid checks		$7,862 35
Feb'y.	do	16,736 46	do		12,848 78
March.	do	9,145 78	do		8,096 54
April.	do	4,834 24	do		6,581 16
May.	do	5,274 06	do		5,580 32
June.	do	3,984 95	do		5,812 35
July.	do	6,783 80	do		6,759 17
August.	do	6,264 92	do		9,952 60
September.	do	2,901 70	do		7,873 02
October.	do	2,408 75	do		7,788 00
November.	do	9,336 62	do		6,173 26
December.	do		do		7,741 32
		75,059 48			96,920 15

After discussion & remarks by the stockholders generally in regard to the matter, copies of the vice-president's letters of December 26, 1868, and February, 1869, in answer to president's letters from Colorado, were read, and, on motion, duly approved.

590 On motion, it was agreed that the election of officers of this company take place to-morrow, the 6th instant, and that the president, executive committee, or trustees be authorized to notify the officers of the Rocky Mountain National Bank, and all the other creditors of G. K. Sabin, that Mr. Sabin has had no authority from the stockholders, trustees, directors, or officers of this company to contract any debts in their behalf, and that Mr. George K. Sabin resigned his position as special agent or superintendent of this company on the 5th day of April, 1866.

On motion, this meeting then adjourned.

JOHN H. WATSON,
Secretary.
By JOSEPH M. WERNER,
Act'g Sec'ty.

The plaintiff objected to the admission of said minutes in evidence for the reason last before assigned, & the court sustained the objections, & the defendant then & there excepted to the ruling of the court.

Witness Becker then testified as follows:

(Book shown to witness again.) "I was present at the meeting
591 of defendant's corporation, April 18th, 1865. There was a record kept of the proceedings of that meeting. That is the record. I have just looked at it."

Defendant here offered the minutes of said meeting of 18th April, 1865, in evidence. Plaintiff objected. Court sustained the objection, & defendant then & there excepted to the ruling.

(Paper here handed witness.)

Witness Becker then testified:

"This is the resignation of Sabin. I was present when it was handed in."

Defendant here asked the witness, "State whether his resignation was accepted by the board of directors."

The plaintiff objected to witness answering, because not the best evidence. The objection was sustained by the court, & the defendant then & there excepted to the ruling of the court.

Defendant here hands same book to witness and asks "Look at that and see if that is a record of his resignation and the acceptance of it."

Plaintiff objected to the witness answering. The court sustained the objection, & the defendant then & there excepted to the ruling of the court.

Defendant here asked the witness to "State whether you were
592 present at a meeting of the defendant's corporation, held in New York the 5th of April, 1869." Witness answered "I was." Defendant then asked "State what action was had by that meeting in regard to this claim of plaintiff at that time." The plaintiff here asked witness "Was there a record of that meeting at the time?" Witness answered, "Yes." Plaintiff then objected to the witness answering defendant's question because not the best evidence, & for the same reasons as before assigned, & because it is an attempt to prove what occurred at a stockholders' meeting, & the stockholders have no business to act on subjects of that character. The court sustained the objection, & the defendant then & there excepted to the ruling of the court.

Here the defendant offered to prove by the witness on the stand, Mr Becker, an officer of defendant, as follows: that he was an officer of defendant, & was present at a meeting of the officers of said corporation on the 18th day of April, 1865, when George K. Sabin was appointed agent of defendant; that he was appointed by resolution of the
593 board of directors, and that his agency was special and limited agency, and also that he (witness) was present and an officer of the defendant at a meeting of its officers in New York on April 5th, 1866, & that on that occasion Sabin made a report in writing & resigned his position as special agent of defendant, & that his resignation was accepted by defendant, and the treasurer ordered to pay his salary to that date. Also, that witness was present at a meeting of stockholders of defendant, held in the city of New York on the 5th of April, 1869, & as president of the defendant presented to the stockholders the claim and account of plaintiff, & that action was at that time taken by the stockholders & the whole affair repudiated by the defendant, & an order passed to notify the plaintiff of such repudiation on the part of the defendant.

The court here stated that as far as any notification to Mr. Kountze is concerned defendant was at liberty to prove that, and the court refused to allow the defendant to give said proof to the jury, and the de-
594 fendant then & there excepted to the ruling of the court.

Witness then testified:

"I heard the testimony of Herman Kountze. I went east the 20th or 21st March, 1869. I went by the way of Kansas City & St. Louis to New York, & I arrived in New York about the last of March. I did not not go by Omaha. I left New York to return in the latter part of April. I came by Omaha on my return. I was at Omaha subsequent to the stockholders' meeting in New York. I called at Kountze bank, in Omaha. I met Mr Augustus Kountze there; the same person I had seen in New York, the person I had agreed to meet in New York. I went to see him, & we talked of this claim.

"I told him the company repudiated the debt. I did not notice that

Herman Kountze was present. I talked to Augustus: Herman might have been present. I did not recognize him as the one I had met in New York. I came and told Augustus that the company repudiated the debt, & if he expected to collect it from the company he would
595 have to sue them. I told the same man the same thing at New York. He said they had sued them, brought suit, &, as I understood him, said they had attached the ore.

"I did not at that time state to either Augustus Kountze or the president of plaintiff, or to any one, that I was going East to make an assessment and pay that debt. I did not at that time state that the debt was just & should be paid. I first knew that suit had been instituted from Augustus Kountze, at Omaha.

"I was not at Omaha at any other time in the spring of 1869 than the one mentioned: that was the 4th of May, 1869. I telegraphed Mess'rs Royle & Butler that day from Omaha. Despatch shown witness. This is the despatch I sent to Royle & Butler: it was sent on the 4th May, 1869, the day it bears date.

"I had a conversation then with Augustus Kountze. Mr Charles B. Kountze requested that I call upon his brother in New York. Said his brother from Omaha would be there. He gave me their number: think it was 52 Wall street. Said he would like me to call there, explain everything to him, & that he had already communicated to
596 him about the matter: & he wanted me to effect an assessment if possible on the stockholders or shareholders of the company, & report to his brother as soon as I had got there & called the meeting & spread the matter before them.

"I told him I would do so, & that I would write his brother to come & represent the case, & with that understanding I went on there: that is what I went for. I called on Augustus: we talked the matter over. I thought until a year ago that he was the president of the plaintiff. He told me the bank claimed that Sabin had authority & the company denied it: he tried to get it fixed up. I told him, & he understood the laws of New York well enough for that, that I could not involve the company for a debt. The directors or stockholders must talk the matter : there was no money in the treasury to pay the debt at all: it would be necessary to make an assessment.

"We talked the matter over: he called at the Astor House to see me. I represented to the stockholders that he would be there. I notified him when & where the meeting would be held: he did not come: the
597 meeting adjourned over to the next day & still he did not come. They utterly repudiated the debt. After the meeting adjourned I went & called upon him & told him the stockholders repudiated it entirely: said Sabin had resigned: & I told him everything that was said at the meeting. They said he had no authority to make the debt, & that the bank ought not to loan money without authority from some source. He said he was sorry. I told him the principal stockholders were neighbors around his bank in Wall street. He said that he would call on them. Afterwards I learned that he did not call on them: not on any of them.

"I saw him once or twice after that at his office in New York. I next saw him in Omaha as I returned. I promised to call there. Then we had the conference I have detailed.

"I was president of defendant in 1868. I have heard the testimony of Mess'rs Potter, Goodspeed, & Kountze in regard to transactions said to have occurred in their bank in Central January 1st, 1869, & I heard Mr Potter's testimony in regard to conversation in Chase

598 Gulch, December 16th, 1868, at the last time Potter called there to see me, & we talked a little while about various things; he mentioned this claim & wanted me to deposit some 5-20 bonds to secure it. I told him I had no 5-20 bonds in Colorado. He then wanted me to pay the debt or give them security. He insisted pretty strongly; began to make demands. I told him I did not think the bank had any devine rights. I probably swore a little on that occasion. I told him M'r Sabin had no authority to make any debts at all in the name of the company; told him I had been absent to New York during the summer, & down South, & did not know what had been done at the office; that I would write to the office & see if Sabin had had any instructions, & if his agreement had been changed in any way; would write at once and ascertain; would spread the thing before the company by the very next mail.

599 "There was a good deal of that kind of talk. Potter was very anxious to get the money or some security. I had not been notified until a few minutes before that. He said he thought M'r Sabin talked to me about it before, & I told him he did not. I did not at that conversation state that the debt was just, & the money had been expended on the property of defendant I did not know anything about; of course I did not say anything.

"The next conversation I had about the matter was with Charles B. Kountze, a few days after the 16th December; it was the last conversation had with Kountze until he wanted to get the matter arranged—fixed up. I told him I had written to the company, informed them of it, and would get an answer; he talked a good deal, tried various ways to see if I would not accept it. I told him I had no authority; the directors & stockholders must do that kind of business. I was an executive officer; only executed what they directed. I did not tell Mr. Kountze at that time that the money had been expended on the mine of defendant for its benefit. He said it had; I did not know anything about it.

600 I made no promises on that occasion, because I had written to inform the company.

"I think the next conversation was on or about the first of January, with Charles Kountze; he sent for me to come to the bank. I went over. He said he wanted to get it fixed up at the end of the year, & thought I had time to get a letter back. I said I had not. I told him I could not do anything at all to assume it, any way. He wanted me to sign a deed of trust or bond or mortgage. I refused to sign it; told him I could not sign it. He urged the matter, & urged very strongly, and I got a little miffed at it, and started out; did not want to do anything, was not going to do anything. It was a large amount of money, & then I spoke of a national bank loaning so much money to any one party. He said he was sorry it had been loaned, and if he had been there it would not have been loaned to Mr. Sabin.

"I told him Mr. Sabin had transcended all authority. I said he had no authority to borrow any money, or contract any debts, or do any business in the name of the company. He then wanted me to write a letter,

601 to do something or other to satisfy his brother, as he said the thing would; that I would at least attempt to get an assessment made or spread it before the company.

"He said M'r Sabin had told him he had authority to draw on the company, & asked if M'r Sabin had not told me so. I said that M'r Sabin had told me that M'r Potts had told him he could draw on him. I told him I had written to ascertain just what rights M'r Sabin had; what had been done since I had been absent. I told him I had been in

Georgia & South Carolina all the latter part of the summer, & did not know what the company had ordered, but would hear from the company in a day or two in answer to my letter. The more I did not want to sign the more he wanted me to sign something or do something. Believing Sabin's assertions that he had authority, I wrote the letter dated January 1st. M'r Kountze wanted me to sign it as president; I refused, & he wanted me to strike out the part that I did not know anything about it before the 15th December. I told him I would not
602 do that because I did not know anything about it.

"He asked me if there were any debts against the company. I told him I did not think there were any debts from the time I heard of it. Sabin had paid all the bills. I declined to sign as president; told him I would not do it if he would give me ten thousand dollars; that I would not do anything to bind the company. I told him I had no authority; told him he knew himself, as an officer of the bank, that I had no authority to bind the company without spreading it before them. I told him I had no authority to make or contract any debts or sign anything officially; that is just what I told him. I had not any authority at all to even do anything to bind the company. I had no authority at all to contract debts."

Defendant here asked the witness to state in whom of the corporation defendant the power was vested to contract debts or make payment of debts. The plaintiff objected to witness answering, because that
603 is a question of law, & that not the way to prove it, & it is not material. The court sustained the objection, & defendant then & there excepted to the ruling of the court.

Witness then testified:

"When Mr. Goodspeed returned, the first week in January, he asked me about the money; wanted it; said he & Sabin had been friends; that he had assisted Sabin, & he thought the matter ought to be settled. He urged me to do all I could about the matter. I told him I had written; had not got a reply; that when I got a reply from the company I would report; tell him all about it. A day or two afterwards a letter came from Werner, vice-president of the company. I had a conversation with Goodspeed after that. I went up a very short time after the letter came, & told him I had got the letter, & all the reports seemed to vary & differ. The directors refused to have anything to do with it. All were astonished at the debt. They hardly believed such an amount had been created unless there was some scheme laid to see them
604 out. I think I told him the contents of the letter & read him part of it. He was surprised & of course troubled about it, as he was cashier of the bank, & he & Sabin were great friends.

"He said it was an accommodation to the company; he always thought it was an accommodation; thought the thing should be settled; he urged the matter. I don't remember exactly all that was said. I told him I certainly would spread it before the directors & let them see what was best to do about it; would do all I could to get it recognized. He said a great many things. I told him I did not know anything about it; the debt was new to me, as it was to the balance of the company, when I first heard it.

"We talked about it maybe once or twice more before I wrote to have this meeting of the directors called. I do not know just when I had the next conversation about , as M'r Potter or Goodspeed testified. I was over in town occasionally, & they would see me & speak about it. Before I got the second letter from M'r Werner M'r

605 Kountze was up again, & he was urging the matter; wanted it fixed, & threatened to sue.

"I told him to sue if he thought that was the nearest way to get it; that calmed him down a little, & I told him after I had received a letter from Vice-President Werner that the directors repudiated the whole thing. I told him the last resort would be to call upon the stockholders; then he told me his brother had opened or was about to open a bank in New York City, & his brother from Omaha would be on about the first of April; I told him when the regular annual meeting of the stockholders would occur the first week in April. The directors would never have any thing to do with accepting it, & he thought I had better lay it before the stockholders; the arrangement was made that I should do so & should go on & meet his brother in New York.

"I heard the testimony of Charles B. Kountze, in which he said that I said in these conversations that the debt was just, the money used
606 in defendant's mine, & I would see it paid; I did not have any such conversation; I never made use of any such conversation; did not know any thing about it. I heard the testimony of Mr Goodspeed on the same subject: I never said the debt was just; I did not know anything about it: the debt had been going on for 8 months."

(Letter dated April 13, 1868, from Becker to Sabin, marked "A," shown to witness.)

"This is my handwriting but I do not see any signature to it: it seems to be a memorandum of something about a suit about some property adjoining mine on the Bates lode with the Rocky Mountain Mining Company; the company owned the mine that joined mine."

(Witness' attention called to letter dated May 12, 67, in evidence, & marked "J.")

"The taxes mentioned are taxes on my mill & some property I had in Nevada. The transaction with Darlington was an individual transaction: the company had nothing to do with it. In same letter, when I speak of taxes again, it has nothing at all to do with affairs of
607 defendant. Mr Sabin wrote me as my agent during my absence from Colorado."

(Witness' attention called to letters dated Astor House, February 9th, 1868.)

"The bank-note spoken of is an individual affair; he drew on me at Kountze' bank on some private matters, & he sent two notes to me in connection with the same—two letters, I mean. I could tell what I referred to by advising him to get out of debt if I could read the letter."

(Letter handed to witness.)

"It was about a debt that he owed Long on the Forks lode, & wanted me to pay it."

(Witness' attention called to letter marked "G," dated March 29, '68.)

"I wrote the letter. I never wanted Sabin to get in debt at any time. This had nothing to do with the business of the company. The big stamp I put into my own mill & some Bretola pans. I also write to give Elliott a place, any job he can. This letter was written on the arrangement to develope my property. He began on my property some
608 time in January, 1868, & this was March, 1868."

(Witness' attention called to letter marked "F," dated Albany, New York, April 8, '68.)

"I speak in that of the stamp in my mill & of a belt I sent to my mill. The suit spoken of is the one that was progressing about the property joining mine on Bates' lode. I instructed him to go to Hal Sayr & have an abstract made."

(Witness' attention called to letter "C," dated April 15, '68.)

"I would have to make a little explanation about addressing him as superintendent in that letter. Sabin wrote about this suit of the Rocky Mountain Gold-Mining Company. They claimed my entire property and some over on the Union Company's property, & he wrote me about that matter. That was the suit. M'r Teller brought the suit, I believe. He wrote me he was powerless about the matter. I had no authority to write him whatever. I wrote him on my own responsibility. It was nothing at all concerning this litigation or the affairs of the com-
609 pany with the bank. It refers to nothing else than this suit. It tells him to retain attorneys."

(Witness' attention called to letter marked "B," May 17th, 1868.)

"In this letter I refer to Sabin's getting in debt. At the time of writing these letters I did not know of any business being done in Colorado except the suit with Rocky Mountain Mining Company in the name of defendant. When I speak of the big stamp & employment of Elliott, I refer to the big stamp in my own mill & to giving M'r Elliott a place. I think these letters were written subsequently the time I was making arrangements to run my mill & develope my property. All but one of them, I think one, is dated before. I heard the testimony of Sabin read; heard it when he says that on my return the 1st of October he stated to me we are behind five thousand dollars. When I got back, of course I enquired how he was getting along. He had purchased this 50 feet of west half of Discovery, & had been building in front of his resi-
610 dence, & it set him back. He had borrowed about five thousand dollars, or he was five thousand dollars behind. There was some talk of the amount, of course. I kept urging him about getting in debt. I told him he better not borrow it. 'Why,' said he, 'you told me to buy it.' I told him I would take it at certain figures.

"We had considerable conversation about that. I had been gone about eight or nine months. Went away in January & came back in latter part of September or first of October, & this conversation occurred then. We did not know, I did not know, at that time that any business was being done in Colorado in defendant's name. I heard the testimony of Sabin, Potter, & Goodspeed in regard to repairing the mine in fall of 1868. Sabin agreed to develop number three for the use of the mine & give me the first-quality ore; that is, only a few cords of the proportion as we regarded it, being one in ten. He was to keep the mine in good repair as I put it in when I first fixed it.

611 "The mill was repaired at M'r Sabin's expense, that portion that was out of repair.

"I heard testimony of Potter & Goodspeed in regard to my paying debts prior to December 16th. There were some repairs that I furnished the money; some additions made that I furnished the money for; additions made to my mill, pulleys, belts, & such things. I did not pay any debts contracted by Sabin for mining. I heard testimony in regard to drawing money from the East to pay debts. I drew my own money from M'r Potts, my private banker. I had funds of my own on deposit with him. Sabin asked me to loan him some money, & I loaned him some. I think about forty-five hundred dollars."

(Defendant here asked the witness to "state if you know what was the amount of the money that you lent him." Plaintiff objected to witness answering. Court sustained objection, & defendant then & there excepted to the ruling of the court.)

"I heard the testimony of M'r Goodspeed that the books of defendant never left the bank, but that I came & examined them in the

612 back room. I don't think I ever saw those books, or any of the Union Company's books, out of the office any where till I took them off the table last year, last trial. I never could get them. I never saw the books of the defendant at all till I took them from the table last year. I said Goodspeed, he showed me the bank-account, made me a list I took east.

"I heard Potter testify in regard to two notes of five thousand dollars each. I was in Gilpin County October 3d, 1868. M'r Sabin was in my employ from & after the 16th December, 1868, until the 19th or 20th March, 1869. I paid him after the 16th December. I heard the testimony of Goodspeed & Potter in regard to my settlement with Sabin. In that settlement I did not pay him for any indebtedness of the Union Gold-Mining Company. I settled for his services & for the use of his engine, & for some little work he did on number three after the 16th December, 1868, & until the 19th March, 1869.

"I heard M'r Topping's testimony in regard to the bill paid
613 by me alleged to have been contracted by Sabin. That was for some machinery used at my mill. The bill I settled at Tappan & Company's was not contracted for the Union Gold-Mining Company. I settled for no part of material furnished the Union Gold-Mining Company. M'r Sabin settled all that."

(Here witness was shown two copies of letters.)

"This letter is in M'r Sabin's handwriting. I received the letter a short time after it was written, by one course of mail or express, I don't know which; sometimes he sent by mail and sometimes by express."

(Court here marked the letters.)

"This other letter was written by Sabin & directed to me. I received it soon after it was written. These were recognized last term."

(Other letters shown witness.)

"This is one of the letters written by Sabin & received by me, & this is the same."

(Plaintiff's attorney here stated that he consented these copies should be treated as originals.)

"The originals of which these are copies were written to me by Sabin & received by me."

614 (Another letter handed witness.)

"This is my handwriting & my signature; it is directed to Sabin. I got from Sabin himself; it was sent to him by mail; it was written the time it bears date & sent about same time."

(Here the defendant offered in evidence the following letters heretofore identified by witnesses & marked by the court, & they were admitted & read to jury.)

Marked "M H:"

CENTRAL CITY, *May 31st*, 1868.

FRIEND BECKER: Yours of the 20th came to-day. You say shut down all the works at Bates & mill, & quit at once if the mill-ore does not pay all expenses.

Now, do not be alarmed. You will recollect that I have furnished all the money necessary to carry on the works thus far on my own account,
& you must not think that I used any aid of yourself or the
615 company outside of the mill-ore in the mine. I know what I am doing, and will guarantee success without risk to yourself or the company. I have made all my arrangements with this view.

Your most obedient,

GEO. K. SABIN.

Marked "M H:"

CENTRAL CITY, *16th March*, 1868.

T. H. BECKER, Esq.,
Pres't Union G. M. Co., New York:

The works of the U. G. M. Co. are progressing the same as usual; sinking shaft & running adits, and paying all expenses from milling the 2d & 3d quality ore, and laying up the first class about one ton per day as usual.

Respectfully, yours,

GEO. K. SABIN.

616 Marked "M H:"

CENTRAL CITY, *25th May*, 1868.

T. H. BECKER, Esq.:

Yours of the 13th & 17th are received.

M'r Elliott is feeding; he showed no disposition to work until I told him you had requested me to give him work, then he preferred to feed. I am now working on the big stamp; commenced last week; it is a great job to put it up; had rather put up a 20-stamp mill. Now, as to the mine paying, I claim I can make the best showing of any company in Col. That the second-class ore will not always pay expenses is no guide when we have at least 600 tons of No. 1 ore on hand that is worth 200 per ton; do not say that we can now realize that sum for it, but it is worth that sum.

You will remember McIntyre crushed several cords ore for me that was well selected from the Bates, which yielded 40 per cord.

617 Now, as we worked the leads near the surface, it yielded less, so I commenced to put the shaft down *down*. It has opened a good body of ore 60 feet below the lower level, & I shall commence other levels soon. I have no fear that the result will be all right, & that it will pay a profit from that level.

I know that I can carry the mine through on my own responsibility unless the lawsuit interferes; that may bust us all up, for I expect to be beat, and our ore is all attachment by R. M. G. Co.

* * * * * * *

You may yet be here in time for the suit. It is all I can do to keep men off your Granite & Hunter, and if I had a power of att'y from you I would institute a suit at once against some Dutchmen. I think I had better put some men at work on it first June if you are not here. The land office is now opened at Central. I guess you will find the officers ready for anything.

Your most obedient,

GEO. K. SABIN.

618 Marked "M H:"

CENTRAL CITY, *April 1st*, 1868.

FRIEND BECKER: You can say to M'r Potts & Co. that the Bates Mine is a success. I have laid up 200 tons of smelting ore for the company as per agreement. Do not owe one dollar this date, & have several hundred dollars ahead to-day.

Your most obedient,

GEO. K. SABIN.

Marked "M H:"

CENTRAL CITY, *April 25th*, 1868.

FRIEND BECKER:

DEAR SIR: I will follow your instructions and shut down all the works as soon as I find the mill-ore will not pay all expenses. I am now getting ahead again. Do not be discouraged. You can hold a high head soon.

Your most obedient,

GEO. K. SABIN.

619 Marked "M H:"

CENTRAL CITY, *May* 1, 1868.

T. H. BECKER, Esq.:

DEAR SIR: Don't feel uneasy about my success. I have arranged for all the backing I want, right here on the ground, & can & will make it run without any risk to you or the company. I propose to stand up to our understanding and make the mill-ore from the Bates pay all expenses or shut down, as you order. Write often.

Yours, truly,

GEO. K. SABIN.

Here the defendant offered in evidence the following letter which had been marked "M H" by the court & identified by witness Becker:

ASTOR HOUSE, NEW YORK.
April 12*th*, 1868.

GEORGE K. SABIN, Esq.,
Central City, Colorado:

620 D'R SIR: I read your letter of the 1st to several of our largest stockholders, & also to our finance committee. They are very much pleased at the success you are making, but all say they do not wish to incur any expense whatever. They prefer, "old fogy like," to let "well enough alone;" so don't run in debt; don't incur any expense whatever.

They are all willing that you should have all you can make out of the mine over & above the 1st quality ore, which so far gives satisfaction.

In short, they wish you to continue to run it on your own hook. I tried to get them to change the programme, but did not succeed. Just so soon as "it don't pay," my advice is shut down *shut down.*

Col. Mallory's friend at Georgetown has an eye on you. Your success so far is a damper on Col. M.'s friends, so go slow. I start south next month.

Your ob't s'v't,

T. H. BECKER.

P. S.—Election over; same directors & same officers, & no change.

621 To the admission of which the plaintiff objected, because it was a private letter from Becker to Sabin. Letters of a man may be evidence against him but not for him. It was found in the possession of defendant's president & is no evidence here. The court sustained the objection, & defendant then & there excepted to the ruling of the court.

Witness Becker then testified further as follows:

"Defendant first became informed that the money obtained by Sabin had been used on number three west discovery claim & in running the mill at the April meeting of the stockholders, when I told them about

it, in the year 1869. This was the first time I had talked to them about it at all."

(Letter shown witness.)

"It is in Sabin's handwriting. It was received by me soon after its date, & has been in my possession since I received it."

(Letter marked by court.)

On cross-examination witness Becker testified as follows:

"This is the third time I have testified in this case. I am still president of defendant. There is no other officer of defendant in this
622 Territory except myself; has not been since 1866. This arrangement in regard to first-class ore was made with Sabin himself. It was made in presence of all; there were four of us present. The last conversation when he was starting away was, he talked to M'r Potts. I can't say there was any contract; simply an agreement. He simply agreed to come out to Colorado & work the mines as I have stated. He made the agreement with myself and M'r Potts. Bonnell was present on one occasion, & M'r Brevoort I think was. Sabin contended that it was made with Potts. As I have stated, it was made in the presence of different ones. Sabin told me it was with Potts.

"On the former trial I think I swore it was made with Potts because he told me it was. He told me the last conversation he had was with M'r Potts. I do not swear exactly upon that. I might have said the contract was made with all of us. All of us were present. He went in when I was not there. If I was not there I did not hear the last conversation. All I know of that is what Sabin & Potts told me."

623 Plaintiff here asks witness this question: "Did you not swear, for the purpose of making a continuance in this case, that M'r Potts made this contract?"

To the witness answering the defendant objected, because statements in affidavits for a continuance cannot be re-examined in a court. The court overruled the objection, & defendant then & there excepted to the ruling of the court.

(Here the witness was handed an affidavit.)

"I made an affidavit for a continuance of this case at the May term, 1872. I think the body of this is in M'r Reed's handwriting. That is my signature. M'r Reed read it to me. This appears to be the affidavit I made."

Plaintiff here asks the witness: "Did you not swear, among other things, that you expected to prove by Potts, a material witness, that the arrangement made by defendant with George K. Sabin, by whom the present debt was contracted, was made by Potts on part of defendant with Sabin?"

The defendant objected to witness answering, because no part of the affidavit is proper testimony. The court overruled the objection,
624 & defendant then & there excepted to the ruling of the court.

Witness then answered: "Yes, that is the statement made here. Sabin informed me. I stated it as a fact because he told me so. I testified on first trial of this case substantially as in this affidavit, that this arrangement was made with Potts. I might have done so. I don't remember the exact words, but that was the information received from both. Sabin & Potts both told me. We all talked together about the thing, and the arrangement & understanding was that he was to come to Colorado and run the mine. Potts & Sabin told me the arrangement was made with Potts. I was not present. I have sworn three times that Potts made it. I don't know anything about the correctness of Sabin's deposition. Potts & Sabin agreed in their statements to me;

they were just the same. I could not know what occurred at their last meeting. I don't pretend to know anything about it except what
625 they told me. I was vice-president at that time & a stockholder."

Plaintiff here asked the witness to "state whether you were a large stockholder at that time."

The defendant objected to witness answering, because not proper cross-examination. The court overruled the objection & defendant excepted then & there to the ruling of the court.

Witness then answered: "I think that at the time of this contract in 1866 there was less than half the shares on the book in my name."

Plaintiff here asks: "How much did you own; how much belonged?" Defendant objected because not cross-examination; court overruled the objection & defendant excepted to the ruling of the court.

Witness answered: "I was interested at that time in about, I suppose, if we had had a division, probably in about one fourth of the stock. That agreement was made. I would suppose a contract was something written, something that would be firm & binding on both parties. It was a contract or agreement. I tell you it was verbal. He said
626 that arrangement or contract, whatever it was—whatever the agreement—that the said arrangement was or contract was a contract. It seems that I called it a contract in this affidavit. My attention was never called to the fact that it was important to make out that this was not a binding contract. I can't tell when I learned there was a difference between a contract and an agreement; have known it a number of years. I think I knew it when I signed the affidavit.

"On 16th December I promised Potter to write, & I did that night. The company must have received the letter about the 26th. Sabin was to pile all the 1st-class ore. I don't think he did it, from what I heard since. It was left entirely to Sabin to sort the ore. One of our talks was that Sabin was to pile up the 1st-class ore for the use of the mine; he did not think there was much in it; he did not think there was more than one cord in twenty or one in ten; he thought there was a little. He was to have all he could make over & above that, as he had
627 done before. He had not run a great while. From April down to September, he was not to have any compensation; no agreement made for any salary; nothing talked of.

"I swore on the former trial that 'I always told him to put in for the same salary;' that was in relation to the first salary I was arranging. I corrected that at last trial by saying it referred to another matter, it referred to the first. I was the one selected to fix the salary, & that was the time I told him the same salary that Mallory got before.

"This private talk between him and me was in my room; it did not refer to his first salary, it did refer to Mallory's salary after he succeeded. From April until the first day of January, 1866, received $3,500, from that time then received $3,500 to the first of January. We talked it over ourselves. I came here in 1865. After Sabin was appointed I was in New York. I don't really remember when I came here. I don't know that I was here during the summer of 1865; don't think I was here
628 in 1865 at all until after Sabin came from New York; I don't recollect. One of the conversations in which I told him I would put in for the same salary was in New York before the meeting & before his resignation at all. I had the making of the salary. He came to my room. He told me had got $3,500 before he came to the Union Company at all. I don't know from what company. I know he was agent for some company in Nevada, I really don't remember what. I wanted

him to put in for that much. I had power to fix it. I wanted him satisfied.

"I explained last term that it was a private talk. I don't know as I said anything about Mallory's salary last trial. There was no question asked me about Mallory. I was not asked if Sabin had been an agent before. That is my recollection of the contract. We talked it over at the Astor House several times. I am a personal friend of Sabin; he had been acting as my agent in the Territory, & does yet when I am
629 gone. This talk of ours had reference to the salary he was to get that Croswell had wrote.

"This was not the conversation that took place after Sabin had gone to work under the arrangement with Potts. I may have said at last trial that he was to use the other grades of ore; they were to belong to Sabin; he was to use them; mill them as he pleased. I always told him I would put in for the same salary. If I did it was because I had been asked; I thought what salary he was to have before this might have been right in connection with the matter we are talking about now; it might have been; can't say.

"I think I was here in May or June after Sabin started. I stayed in Central, I think, three or four weeks, then went to Denver, and possibly I went to the South Park; did not stay there very long. I think I then went back to Central; may have been there in July, possibly. I am not sure what time I left the Territory; kept no memorandum. I know I came out again in December. I think I testified on a former trial that I did not get out of this Territory till September. I
630 was at the mine a few days before I left. I meant yesterday that I was only a few weeks in Central; I said so yesterday. I said I was here a few weeks, not very long. I was up to Central three or four weeks. I am pretty sure I returned to Central that season. I swore on a former trial that I was at the mine a few days before I left, & that the 1st-class ore was being piled up in small quantities.

"I returned to Colorado again in December, & stayed until some time in January; can't fix the date. I think I said I was around Central two or three weeks, & afterwards said three or four weeks. I can't say just how long I was in Central the second time that season; only a few days; I hardly ever stayed just one day; was here on short visit. I left here the 2d or 3d week in January, 1868, for the East. I might have been in Denver on the 10th. I might have written a letter to Sabin on the 10th; don't recollect; could tell if I saw the letter. I did not return here till the latter part of September or first Octo-
631 ber, 1868; I always thought it was 1st week in October.

"I can't state whether I was here in January, 1865. Mr Mallory was here. I don't think I was here in January, 1866. I was not here in January, 1867. I was in the Territory part of January, 1868, & part of January, 1869. I was here on my private business."

Plaintiff here asks witness: "What business were you carrying on?" Defendant objected to witness answering, because not cross-examination; the court overruled the objection, & defendant then & there excepted to the ruling of the court.

Witness answered: "I was just as I always have been, either buying or selling something; my own private business."

Plaintiff here asked witness: "Were you mining anything at that time when you were here?"

The defendant objected to witness answering. The court overruled the objection, & defendant excepted then & there to the ruling.

Witness answered: "I can't say that I was mining. I had some little

work done on two or three different lodes. I had some little work done on the suit you (Teller) helped defend me in Nevada, the
632 Hammond Tunnel."

Defendant here objected to the admission of this testimony, and the court overruled the objection, & defendant excepted then & there to the ruling.

"The men who worked there did it by contract; it is several hundred feet in. The contract was for 300 feet. Part of it was done during this time, very little: some part of it done in 1867; I don't know whether any in 1868 or not; it must have been done before 1868. I was doing other business. I was buying some lands around the town. I had some work done on the Maryland road, over in Chase Gulch."

Defendant here objected to this testimony because not relevant. The court overruled the objection, & defendant then & there excepted to the ruling of the court.

"All the work I had done was done by contract. When I came I stayed at my house in Chase Gulch, about a mile from Bates' Mine, 150 or 200 feet from Douglas' Mill. I very seldom went to the mine; I went there occasionally; I was to the mill very frequently. I made an arrangement with Sabin in 1867 to run my mill; he was to run
633 ores through it, & to work No. three; he agreed that he would develop No. three for the use of the mine & give me the first-class ore.

"Sabin was not working No. 3 from the time he started. I was not here then. I first knew he was working No. 3 when I returned in September or October, 1868. We made the agreement some time in 1867, when I was out. I think he wrote me that he was working this. I knew from his letters. I can't fix the date of bringing the Rocky Mountain Gold-Mining Company suit; think it was in spring of 1868. Sabin wrote me he was working number three. I wrote him repeatedly. I knew it by his information & knew it positively by going into No. 3 when I came out. This is the way I want to explain it. I gave Sabin all direction' what to do in case tunnel broke through on me.

"The first information I had of Sabin's going to work there was in January; I think January, 1868. I was out here part of January, & he told me he would go to work at once on number three. He had
634 written me before that he was at work on number three, but when the survey was made & the difference ascertained between the horizontal measure & measuring down the hill he did not believe he had been at work on No. 3 at all, but would go to work once. He ran drifts in 90 or 100 feet, a few feet from Leavett. I told him to leave a wall so the water would not get out.

"I had the mine measured & have a map of it; it was measured directly after quit work. It was stoped in some places 40 feet, & some 60, & some 80. It does not exceed 40 feet in some places; in some places it is 60, some not 40; it is in notches.

"I went in the mine once; could only see by the light of a candle; dark mine; can't say when I went in. I could see a part of the stoping by the light. He was also working west half discovery claim by drifting; can't say how far from top that drift is; was in it after he quit work some time in 1869. I only know Sabin worked it from what he said, what somebody said working there. We walked clear through to
635 Cowenhoven's claim. There was an incline so that you could see persons in Cowenhaven's claim from this west half discovery. There is water in the mine now.

"I testified before that this west half had been worked some, not

drifted through, because Sabin had told me so. There is a hole through there now. You can walk through it now if the water was out. This drift must be all of 50 feet long. There has been some work done, looks like old work, in this west half, formerly owned Hayes & Kurtland; sank a shaft & did some work above this drift; it strikes below that work. The work now done is a drift 50 feet through it, & that is not all. This incline comes down fifty feet from the west end of the west half, & that would be as far as Sabin went. The ore is not stoped out. Sabin did some work on it; he did not drift clear through; other parties did some of it. I don't know how much of it Sabin did. I was not there to see him.

"I testified as I did yesterday because he told me. Sabin told
636 me since the last trial. I do not exactly swear to anything Sabin tells me; it does not depend on which side it is on when it is corroborated by the facts. I asked Sabin about that when I went & saw this map there. I had the measurement before my last testimony; did not have the map. I walked through there & saw the drift myself.

"When Sabin quit in the fall of 1868 there was one level & then the stoping above. There might have been more levels & stoped out. On former trial I testified there was but one level I went in; it had been stoped some 30 or 40 feet high & 30 or 40 feet long, in some place 40 or 60, and along shaft in one place 80; it is 30 in one place; it goes down like notches. The next time I returned after the contract Sabin was not running the mill at all. When I returned here in 1867 he was running my mill. We talked about the contract during that time I was out, & he began to run the mill; am not certain what time was not here; think it was in August, 1867. He was running the mill when I came back next time in December. I had put it in repair & paid for it my-
637 self. When I came back here in September or October, 1868, he was running same mill, & he run a few weeks after I returned; then he shut down to make some repairs; was shut down a couple of weeks; not six weeks; I could not think it was six weeks. The repairs he made on the mill around the batteries & boilers & engine. I could not say that he overhauled the mill generally. There were some little repairs on the engine & about the boilers & batteries. They were leaky. Mr Woodbury had fixed them all in good order. I paid him $800. At that time they had been running over a year.

"After I returned here in fall of 1868, until the 1st December I did various things—my own private matters; was at Denver, Golden, & various places; was in Central every little while. It would have averaged every other day in Central. I passed by the mill on my way to town, & in sight of the mine; could see the buildings; passed by the office of the company, & went in there occasionally. Mr Sabin carried the keys, & of course I was not there often; occasionally he would give me the key, when I would go in & write there. I have been there
638 when Sabin was there & when he was not there.

"The first notice I had from the bank or any one else of this indebtedness was 16th December. That was the first intimation I had that Sabin was running in debt in the company's name; he would occasionally borrow money from me, tell me he was running behind. Sabin told me of indebtedness, & about 15 minutes afterwards Potter came there. If I testified that Sabin told me in the morning I want to correct it, because Potter told me as soon as I met him; it was the time he informed me about the company. The first I knew of the company's being held for that thing was on that evening.

"Sabin was always in debt. Sabin and I had been engaged in busi-

ness. There were some things we had mutual interest in. We were running no mines together in 1867 & 1868, except that he was running No. 3 & west half discovery for himself. I did not consider myself responsible for any debts of his, because I believed him an honor-
639 able man & would not make any debts. I know he wrote one about several things he was in debt.

"In bringing that suit, I on my own responsibility took the responsibility of having him employ attorneys to defend that suit, because they claimed my entire property—all the mine. I had no authority to write that letter; said nothing to the board about it. I might have talked to some of the officers about it. That of course was for the purpose of defending the suit, employing counsel, & for him to hold himself out that he had authority from the company for making the arrangements that he was going to do. I wanted Sabin to hold himself out as having authority to defend my property at least: that is what I mean by saying I wanted him to hold himself out as having authority. I did that on my own responsibility, & it was never spread before the directors in any way. Without any authority I might have recognized him in other ways: I don't know.

"The company never recognized him that I know of. I was
640 not in New York when he started in: was out here part of the time. I won't say that I never recognized him as superintendent; I might have on some other occasions: don't remember; if I did I had no authority; never had any authority; it was all without the knowledge of the board. I have got every particular now how I do those things."

(Letter of February 9th, 1868, shown witness.)

"This letter refers to Long's indebtedness & then all other things here besides Long's. I stated yesterday that it referred to Long, & I want to explain that. I said that referred partly to Long's—no, I say from the balance. I did not read all of it; did not have a chance to examine it; did not read it. In January I went on; he wrote me this in February; he had then gone to work on number three & was running the mine; he wrote me that he was in debt & wanted me to pay this Long debt, and would probably want more money; then it was I wrote him: it must have been working No. 3; he owed Long, &
641 wanted me to pay these debts.

"I don't know that he had commenced working when I left Denver; he was writing me that he was in debt. I think he said there was two or three thousand dollars in addition to Long's; I don't know what the amount was; not against No. 3 exactly.

"If he wrote me to borrow money, this had no reference to the company's matters at all. It had reference to the company's matters so far as work done to get into No. 3. The drift of course this place. I told you the difference between horizontal and inclined measure. He wrote me that he had men at work on number 3. At this time all the information I had was from him. The letter I wrote from New York, in which I speak of the Kountze note & two notes, &c. He told me he had got in debt: the debt he was carrying all the time. I refer to the debts he had, several debts, several indebtednesses that he wrote to me about. Another part is in reference to the consolidated Gregory.
642 They wanted money, of course: they have always wanted it. I say our plan to make a show to do something. We talked of consolidating the whole business.

"If Sabin got behind, he always called on me for money. 'We will lose all tailings,' &c.: this referred to the other debts. 'We will lose full 50,000$ to pay this debt', &c.; yes, every debt he had. I had to

run outside mills till my mill was fixed, so that we could save the tailings. I mean to say we will lose fully $50,000 worth of ore in this debt, Sabin's debt. I proposed to pay it by taking ore out of the mine. Sabin & I were running No. 3 & my mill. I had a contract with him. He was to develop No. 3 for me, and he asked me frequently, 'Becker, if I get behind will you see me out?' I said, 'I don't want you to get behind,' & I rather promised. I wanted No. 3 developed. 'Have debt paid, & then if our mill won't pay expenses,' &c. I referred to mine on No. 3, that was all. Sabin did not write me that he was working on the company's property at that time. I think he was working defendant's property when I left Colorado. No. 3 is all he referred to.
643 He must have referred to No. 3, the long debt, & to the other indebtedness he had. 'Remember we have 20 to 30 men,' &c. 'True, the mine is opened,' &c. He said he had opened into drifts. We had work done on No. 3 before.

"I was not asked the question last trial how much work was done on No. 3. 'When I say the mine is opened, looks well, promises well,' &c., it refers to the whole general thing. He wrote me, probably, about all the work he was doing; it refers to No. 3, partly. 'The mine is open' refers to No. 3 & the company's property both, & 'Which looks well & promises well' refers to both. Sabin wrote me No. 3 looked well. I say the mine is opened, &c., because that is just the representation made to me.

"I knew when I left that Sabin was in debt; he owed the Long debt some time before. He had not told me the company was in debt. 'I am grieved, perplexed,' 'let us look matters squarely in the face,' 'so first let us get out of debt,' &c. I certainly was not bound with Sabin. I mean the debt he was writing me about; it was not my debt. I
641 meant Sabin & me to get out of debt if he wanted me to assist him.

"When I say 'We might keep a treasury ahead,' I mean our own treasury. I don't think I referred to the company at all in this letter. I had no authority to do so; it is entirely a private letter. I did not want him to get in debt for anybody or anything. I was president of the company, president & captain of that company. 'I do hope you will say in your next,' &c.; 'Keep me posted so I can be prepared to advance the money.' This refers to some speculation I was in, buying the claim that Tannatt was trying to get, to pay an outstanding claim against the Rocky Mountain Company; that had no reference to the company either, it was my private matters.

"This letter was written simply for the protection of my own property, & for him to defend it, & to appear with full authority to defend and employ attorneys. I addressed it to him as superintendent, because I would have given him a power of attorney, which I had no power
645 to do, so if you just simply addressed him as superintendent, that was given to show Mess'rs Boyle & Butler that he had authority to employ attorneys.

"After his letters had been taken, Sabin asked me to write to the office of the Union Gold-Mining Comp'y. There was another Sabin there; I never knew the man. Charles Sabin received his mail at Central City. There were none of the letters directed inside that I know of. I don't know whether I ever addressed him in any other letter as superintendent or not. I might have addressed him as superintendent for that very purpose of carrying out the same business that I was interested in. I certainly never had any authority from the directors to address him.

"I suppose he employed counsel the 1st of May. I might have addressed him so for some other purpose; he was superintendent before, & I may have addressed him then. If he resigned in April, it was a month & 17 days since he had been superintendent; if it was 1868, it would be longer; if it was 17th May, 1866, it would have been a month & 17 days."

(Witness' attention called to letter of May 17, '68.)

"I had been blowing that he was a success; had been trying
646 to sell in New York; & then he wrote his letter that he was getting behind. This was in May. If we could by any means show one successful mine in Colorado the thing would go up again & there would be a good chance to sell some property. I referred to the 'best superintendent' just as I would. He was superintendent of my mine. I referred to all the work he was doing on both—anything he was doing at all probably at that time.

"I don't know what time he purchased the west half of Discovery. He wrote me he was getting behind; that is a private letter. I mean by that 'superintendent' just as I did about the mine; he had the best mine & men. I meant by it just what I said there. He was superintendent of my affairs in Colorado. He was working that by that kind of an agreement, and then he wrote me he was getting behind. He was superintendent for all I had. It was to shirk paying. I did not want to be everlastingly paying money. I called him 'best superintendent' to show him up. I had given him a power of attorney to look after my matters. I referred to all he was doing; not to get behind
647 at all.

"I say our men, because the men were working in my mill. I wanted him to shut down mill-men—everything. I certainly had an interest; I expected to furnish money; he always wanted money. I sometimes loaned it to him; I don't do so now. I mean no business man ought to go in debt. I mean that to-day & forever. I used the word manager there; man managing mine."

(Letter of May 12th, '67, shown witness.)

"This is a private letter that I wrote him from S't Louis. I suppose I wrote the latter part of it, saying, 'M'r Potts wrote you after I left New York. Please don't fail to increase the shipments; never go backwards. If Lyon buys any more ore would they rather give you drafts on New York? This will save exchange in getting money to Colo. & saves exchange to send it to New York; let us save all we can.' I think it refers to some private matters. I can't say the day I wrote from S't Louis; don't know now to what business I alluded; to some business between us; he must have been selling ore on his own account.

I wanted him to ship the money to New York. I think that let-
648 ter says, 'I am coming right out,' too, & I did come out in ten days. I think this letter is about Darlington's note. Morse brought suit on it & you (Teller) defended it. I don't think this letter refers to any business of the company; it may.

"'Please don't fail to try to increase shipments.' Yes, Sabin was occasionally drawing on me, individually. I don't think I was ever asked before if he had drew on me; that thing alludes to our exchanges. I wanted to get off from paying any more drafts; this was not permission to sell more. I don't know about his selling ore to Lyon or anybody else.

"I was not in Colorado before I got there in 1867; that was my first visit, in 1867; ten days after that. It refers to some exchange; different exchanges for money. At that time I think we had to pay 3, 4, & 5 per

cent. You (Teller) brought the suit against the Rocky Mountain Company. I believe it was ejectment & trespass both.

"The defendant never had anything to do with working No. 3. It never was in the possession of the defendant; I always owned it.
649 They never did any work on it. Royle & Butler were my attorneys in that suit. I don't know what the representations were to them. I was away when the suit was brought. I may have written to them about it.

"I did not know who was in possession & working No. 3: I was not here. I knew the Union Company never owned or claimed No. 3 in the world. I only knew there was trouble here in the fall of 1868 about No. 3 from what Sabin wrote; none that I know.

"In the letter I said, 'Tell them that while you are the authorized agent of the U. G. M. Co., you do not nor have not worked No. 3 for said company.' I meant that he had worked number three for me. I knew at the time that if it was shown that the Union Gold-Mining Company had not been working No. 3, the plaintiff could not recover; that was with a view of instructing my attorneys that the Union Company was not in possession. Sabin was working number three in January; that was in April. Sabin was not working number 3, & had not worked Nos. 1 & 2 as agent under this contract—under the first
650 contract, two years. This date was April 17th, 1868. They wanted to sue us; furthermore, you know, they wanted to claim that we had been taking ore out of their property, & it was Sabin's engine & elevator. It was not necessary to say, 'While the Union Company has not worked the mine since 1865;' I wanted him to state the facts to the attorneys. This was to show that Sabin alone was responsible. He was bringing the ore from number three, lifting it up through the Union Company's property.

"In case they brought the suit I was going for damages in that very suit, suing us, trying to get the property, damaging the whole property. All I wanted Sabin to state was the truth, the facts in the matter.

"I don't know whether M'r Sabin was in correspondence with any member of defendant except me at that time. He occasionally wrote me letters to be shown to the other members of the company."

Letter of April 8, 1868, handed witness & asked to explain this:
"I wish you would write me privately how much you can save every week over and above all expenses. Is it possible to save up
651 enough to open another claim?"

"I wanted to see what he could save occasionally; wanted to know privately what he could do. I wanted the company to open another mine. Sabin was bound to pile up the 1st-class ore or quit.

(Letter handed witness.)

"This is in regard to same suit; this one of them that I addressed him in as superintendent. I here read it."

The defendant here objected to the examination of the witness about this letter, as it is not cross-examination & not contradicting the witness. The court overruled the objection, & defendant then & there excepted to the ruling of court.

(Here another letter was handed to witness & asked to read it, which he did.)

"It is my handwriting sent to Sabin; addressed friend Sabin; date, S't Louis, January 19, 1868. This is a private letter."

Here plaintiff interrogated witness what the contents of the letter, & defendant objected to the examination of the witness about the letter because it is not official, nor directed to Sabin as superintendent. It

was not referred to in direct examination; it is offered at a
652 time when there is no opportunity to cross examine in regard to it; is on private business entirely; is not part of the res gesta. There is no evidence that plaintiff ever knew of this letter before the present time; it is not obligatory on defendant; is not proper evidence for plaintiff. The court overruled the objection & allowed the plaintiff to cross-examine the witness as to the letter, & defendant then & there excepted to the ruling, & the following is copy of the letter:

"Direct letters to me at Astor House, New York."

S't Louis, Mo.,
Sunday, January 19th, 1868.

Friend Sabin: I arrived here all safe on Friday morning; only one connection, & will leave here to-morrow (Monday) for New York. I never saw money matters so tight in all my life. I am glad I have a safe & something in it. If I did not, I would be in a fog. Now curtail,
curtail, curtail; get out of debt as soon as possible; only employ
653 enough men to keep the mill running; that is, to keep the quartz pile barely on the increase, and prepare for every emergency. I must pay New York, Elliott, for the property $32,000, & that other project will cost $20,000 or more, so I must not advance one cent more for fixing up.

Remember I have never taken one cent out of Colorado, so I ought soon to be getting some instead of paying it out. Send me a statement how many ounces of retort you have sold since the 1st day of January, 1867. It may be necessary to show such a statement to Mess'rs H. & P.

I shall move things when I get there, & shall want all the backing I can get to help me. I can carry all my engagements, but don't want to be cramped, so do get out of debt as soon as possible. No news.

Yours,

T. H. BECKER.

"I don't know whether the first information I had about the
654 debt of Sabin was by a letter written by Sabin between 10th & 19th January or not. He sometimes wrote me twice a day."

Plaintiff here asks witness, "What do you mean in this letter, if you did not know he was getting in debt, by saying, 'Now curtail, curtail, get out of debt?'"

The defendant objected to counsel reading a part of a letter in that way. The court overruled the objection, & defendant then & there excepted to the ruling of the court.

Witness then answered, "Yes, it was in regard to curtailing the running of the mill I wrote the letter. I never saw Sabin do, & never knew he was doing business in the defendant's name. I wrote him to send me a statement of the number of ounces of retort he had sold since January 1st, 1867, for the very purpose of getting some backing in New York to raise fifty thousand dollars. M'r Sabin did not agree to make any remittances to the company; he piled up the tribute ore, as he called it, in the building."

(Another letter handed witness.)

655 "I wrote this letter; have read it."

Here plaintiff showed the letter & asked him to read letter from witness to Sabin, dated April 2, 1867. Defendant objected to the plaintiff examining witness about the letter, for the reasons last above given, & also there is no foundation laid. There is no evidence that it

was ever sent to or received by the person to whom it is addressed. The court overruled the objection, & defendant then & there excepted to the ruling of the court; *Witness* whereupon the defendant's attorney demanded that the letters be offered in evidence before plaintiff's attorney should examine in regard to it, & the court ordered it read in evidence, & the defendant's attorney objected for the reasons last before given. The court overruled the objection, & the defendant then & there excepted to the ruling of the court.

142 OFFICE OF THE UNION GOLD-MINING COMPANY,
New York City, April 2d, 1867.

C. K. SABIN, Esq.,
656 *Central City.*

DEAR SIR: I was elected and have this day accepted the presidency of the Union Gold-Mining Company for the sole purpose of convincing the stockholders that the mines I sold them are fully as good as I represented them to be, and to show them that by good management they will pay handsome dividends on the original investments.

Our treasury is too much depleted to try any experiments whatever; therefore I would suggest that you take hold in real good earnest, and drive matters in the very best way possible to get the very largest yield the least possible expenditure, so that you may first and foremost replenish our treasury. Do this, if no more, and the drooping and desponding spirits of our shareholders must and will revive.

Just here let me again reiterate what I told you last fall. The majority of our company are A No. 1 business men, and many of them have
657 invested in other Colorado enterprizes; and just so soon as you make the Union Company's mine pay you will establish a character and reputation with them that no other superintendent has done, and then your future is made. So let me beg of you to take hold and put in your best efforts to have the remittances increase each week. This, I apprehend, can be done if you manage so as to extend the adits so that more ore can be reached.

Remember we are on trial now, and all we have to do is to show that we are masters of the situation, by the regular increasing remittances and no drafts. I want to establish the fact that we (you and I) can make the money flow from the mines; not as heretofore, flow to the mines.

You know I always said any fool could sink money in mines, but that it took management & experience to make money flow from the mines. If we can make this apparent by adding to the treasury each week and taking nothing therefrom, our shareholders will see the point very plainly, and the means of our success will spread around, and all
658 the mismanagers in Colorado will be superceeded by good and true managers, and our suffering country re-instated in the good opinion of the capitalists of the East.

If the mines are not made to pay, then they are truly worthless, and deservedly so, and must go down. Write regularly once a week, and direct all letters to F. A. Potts, esq., as heretofore, and remit regularly, if possible, to same address. If you sell the ores to the Consolidated Gregory, it is more than possible that they would prefer to give you drafts on the company here in New York; if so, this would save us exchange and express charges, and also save them express charges in getting the greenbacks out there. Let's show good management and economical management in everything.

If we should ever have any successors, let's work so they can't beat

our management. Then shall we be truly appreciated. I will leave here in a few days for S't Louis, and then for the mountains, when we will have a conference as to the best mode of making it pay all parties concerned.

Yours, truly,

T. H. BECKER.

659 Witness Becker then testified:

"I was elected president of defendant in April, 1867."

Plaintiff here asked witness, "Did you not write to Sabin on 2d day of April, 1867, in said letter, as follows: 'I was elected and have this day accepted the presidency of the Union Gold-Mining Company,' &c., *to* 'that no other superintendent has done, & then your future is made;' did you write that?"

Defendant objected because the letter is no evidence. The objection was overruled by the court; and defendant then & there excepted to the ruling of the court.

Answer. "Yes, sir; I wrote that. I meant if he would make the mine pay, pile at the 1st class ore, so that we could get something out of it; he was piling upon at that time; had been when I was out; he was going to sell ore. Intended to get the company to order the ore to be sold; that was my object. He had been working from some time in December, 1866, till April 2d, 1867.

"I did not expect any remittances from him at that time, because he had not sent any remittances. I was elected that very day, and
660 my object was to make the thing pay. I wrote to 'put in your best efforts to have remittances increased each week; this, I apprehend, can be done if you manage so as to extend the adits so that more ore can be reached.' I did not expect remittances unless he got orders to sell what was on hand. Yes, all he would have to do would be to increase remittances and no drafts; they would have to do it.

"I had nothing to do with working defendant's mine then; we had commenced work on No. 3 then—almost a year after—not till January; this was in August, 1867, that he agreed; at that time I had not made permanent arrangements to work No. 3. In summer of 1867 the arrangement was made by which I let him have the mill. I was in New York. These remittances not to come from number three; they were to come from working the Union Gold-Mining Company's property and selling the tribute-ore that he and I piled up. He and I agreed to get up a sale one of those letters; I was going on to get $50,000 for that very purpose.

661 "That is what I want now. I want Colorado re-instated in the good opinion of eastern capitalists, by means of making the mine pay. I think I asked him to write regularly to F. A. Potts, as heretofore, and remit regularly, if possible, to same address.

"I might have given him directions about selling ore at that time. I did not read all the letter. I had no authority to direct the sale of the ore. I spoke to him about selling ore, if he got orders. I did not expect him to sell ore at that time. I expected to get orders. I said, 'If you sell to L., see what he would do.' I spoke of our successors, because I expected to have succession in the management of the mine. The first time I was elected I said, 'Let us work so they cannot beat our management;' that is the very idea. He had something to do with the company because he had agreed to work it upon the terms I told you; he was then piling up ore.

"I called him superintendent because he was looking after everything so far as I was concerned—other property; he was not superin-

tendent of the company; he was Theodore H. Becker's superin-
662 tendent to all interests. I was writing about the plans we had agreed upon. I was writing about both the company's property and my own, as we had agreed upon; the company's and mine and his affairs.

"I proposed to sell the tribute ore to the Consolidated Gregory Company. Sabin was doing all the business I had in the Territory. I don't know in the way of mining whether he was or not. By successors, I mean anybody at all who succeeded in the management. I came out the following month—June. (Here the letter spoken of by witness and marked by court.) I wrote Sabin to make a private report, so that I could get the company to put the mill up on the mine, and I was always anxious to know. If it was a good report, we could get a mill on the mine. We wanted to get it so that we could work the property, and No. 3, & Sabin. We were always after that.

"We wanted a mill on the mine to save hauling and transportation of all kinds and make it as profitable as we could. Sabine made one report when he resigned, and afterwards private reports—as many
663 as two, any way; he wrote privately in letters. I think more than probably I sent him a sheet to make a report on in April, 1868.'

(Paper handed witness.)

"I think more than likely I sent him this. This is simply a memorandum. Yes, it says I made a report for him to send. I wanted a report made out for the year, so as to carry his plan out. He wanted to get full instructions; and they were holding him on his first contract at that time."

(Here witness was handed letter dated Feb'y 10th, 1868.)

"That is my handwriting."

(Defendant objects to any examination upon the letter. Court overruled the objection, and the defendant then and there excepted to the ruling of the court.)

"I wrote this letter of Feb'y 10, 1868. I think that that is February 18th, 1868. The other was written in S't Louis, and could not have been written next day in New York. I wrote in this, 'I do hope you have succeeded in reducing the debt.' I referred to this very same debt. He wrote about debts. The German I consulted in New York, who made assays, said the tailings were valuable. I spoke of it as my
664 debt because he always wanted money to pay his debts; does to-day. I did not know anything about the debt except when he wrote me. I think at that particular time he was working my mill; think the letter of January 10th was written in 1868."

(Plaintiff here handed witness his letter dated January 10th, 1868, Becker to Sabin, and defendant objects to the examination of witness about the letter for same reasons as given to other letters on cross-examination. The court overruled the objection, and defendant then & there excepted to the ruling of the court.)

"I don't think I said that all the knowledge I had of this indebtedness was by a letter received from Sabin. He was continually me when I was here that he was in debt, and he wanted me to pay the Long debt, and he wrote me at New York to pay it; and there was the other indebtedness. He was in debt all the time just like he is to-day. I think I wrote him, your note and box of tailings received, &c., in
665 January, 1868. Think the mill was not running in 1867. I really think it was written in January, 1868.

"In that inclosed bill there was a difference of quite a number of feet. 30 or 40, where the lines were run, and Sabin told me he was working

No. 3 as early as August the year before, and afterwards told me he had not struck it when the measurement was made. I did not think he was running No. 3 in debt. 'I am aware that shutting down the mill would loose us the best run,' &c., means he & I. Sabin told me there was No. 1 ore on No. 3 at that time; no one could tell whether he was working on No. 3 or not till it was measured; could not tell when you crossed No. 3 or 1 or 2. I did not know he had not commenced on No. 3 at that time; he had told me so, and afterwards said he had not been working it. I referred entirely to the debt contracted he wanted me to pay while I was there. He wrote me while I was there. 'Once out of debt I will have new life,' &c., refers to his indebtedness that he wanted me to furnish money to pay; he claimed that it was for me that he made the debt.

666 "I always told the plaintiff that I knew nothing about it, being the debt of the defendant; that I did not think Sabin had any authority.

"If I said yesterday I told Goodspead that I did not know anything about the ore, I did not mean to. I always knew the ore was there. I meant I did not know anything about the indebtedness. After I received a letter from the vice-president stating so, I always disclaimed this being a debt of the defendant. I never admitted it to be a debt of the company, to my knowledge, except when told about it.

"I wrote the letter on 1st January. Sabin had told me at the same time that he had authority to draw on the company. My impression now is that this is the only time. I never admitted it to be a debt of the company. I don't remember that I ever said the debt ought to be paid. This may be a copy of the letter I wrote to president of plaintiff on the 1st January, 1869. I can't say positively; I think it is.

667 "I know there was an abundance of ore at that time. It is just what Sabin represented, that there was an abundance of ore already broken in the mine to pay the debt. This was the only debt reported or that anybody claimed. Kountze wanted me to admit that this was a debt of the company. I won't say this letter is just as I wrote it; it is if this is a true copy. I can't say that it is; if I saw my own letter I can tell."

Plaintiff here asks witness: "At this time you were the owner of a majority of the stock, was not you?"

Defendant objected to witness answering. The court overruled the objection, and the defendant then & there excepted to the ruling of the court.

Witness then answered: "It was not a majority in my name. I did not own a majority. I said so in the letter. I could control a majority. I had it in my hands at the meeting in April. I did not own a majority of the stock not in my name; there was not a little more than half in my name. I suppose I would have owned one-half. I swore indirectly on a former trial that I owned a little more than half. I don't

668 recollect. When I wrote this January letter I had control of more than half, but it was not in my name; when I signed the letter I told Kountze something like I would not admit it to be the indebtedness of the company.

"I had written to New York, and it is my impression that I told Kountze that I had for the purpose of ascertaining whether a new arrangement had been made with Sabin. I think I told him so. I had written on the 16th December, and expected a letter soon. He wanted me to sign this, wanted an acknowledgement of the debt. I utterly

refused to sign any paper he had prepared. I was the only indebtedness I know of."

Plaintiff here asks this question: "In regard to the overdraft of the company in your bank, did you not then treat them as overdraft of the defendant here?"

Defendant objected to witness answering because not cross-examination. The witness admitted that he wrote it: there has not been
669 a clause in that paper denied. The construction of the paper is for the jury. The court overruled the objection, and the defendant then and there excepted to the ruling of the court.

Witness answered: "That is the only paper I signed. I refused to sign the other papers as soon as I learned that you (Teller) had written them; did not sign them at all. I only treated it as an overdraft by writing that. I think I told him I had represented the company. I do remember I said I would not sign anything officially for ten thousand dollars. I told him I had no authority to bind the company. I did not tell him if I signed it officially they would think it was a trick of mine to get hold of the property. I wrote, 'In fact this is the only debt I know of the company owing.' I think I wrote all of the original of that letter of January 1st, 1869.

"Next conversation I had with Kountze was before I went East: can't fix the date of it. He was up there occasionally. In the forepart of January I told Goodspeed the contents of that letter; that the com-
670 pany refused to recognize the debt in any way, to have anything to do with it. I told him I had written to the vice-president, as I promised him I would write; can't remember the words. I received the letter from the vice president. I did not tell him there had been a meeting of the directors. I had no other knowledge of it except I had a letter from the vice-president. There had been no meeting of the board at that time that I knew anything of.

"I think it was the latter part of the first week or first of second week in January that I read the letter from Werner to me to Goodspeed in the bank. M'r Arnold was about occasionally, probably in at the time. He is a man connected with the bank; is in the law office now.

"When Kountze came up I told him the same thing; some days after, might have been a week. I did not show him the letter. I told him the contents; that the directors would have nothing to do with it; that I would have to call a regular stockholders' meeting. I think I said to him the company both refused and repudiated it; I think I said both yesterday. I told Kountze I would bring it before the stockhold-
671 ers in April. I don't know that there was any formal meeting of directors at that time.

"I was in the bank on the night of 19th or 20th March, 1869. I settled with Sabin. I paid him a salary for what he had been working for me and the rent of his engine at rate of $3,500 per year for part of the time—a little while. We kind guessed at the whole bill & made it out. It was a settlement for work up at the mill. He and Elliott cleaned at the table while I was running; worked some little in number three before I shut down, some time in February. We run a part of February.

"I only paid him for a little time at $3,500 a year. He was not there all the time. He was at the mill only occasionally, backwards and forwards. Engine rent at $100 per month. I had run his engine only a little time he was working. I did not pay him a cent on the books; they are not balanced; they show it I never paid him a cent. I have his receipt. I think Sabin asked Goodspeed what was due. I don't

remember that I did. I don't remember that I said I did at first
672 trial of this case. I might have asked him what was due. I don't remember.

"I did not pay him for anything prior to 16th December; I think in the neighborhood of $400. He had got some money of me before; had paid him a portion; he entered some credits made in memorandums on a piece of paper. I might have paid him by check; my impression was I paid him in greenbacks. He owed me at that time. I swore yesterday I advanced him $4,500. I advanced that during the month' of December and January. Before 19th March he owed me $4,500, and has since paid me some of it.

"I paid him for his services at that very time, and at his request discharged him as superintendent. I think I said he was no longer connected with the company. I think he asked me to. I might have said, 'This is the end of our connection.' Goodspeed, Potter, Sabin, and I were all standing together close around the stove. I may have called their attention that I would go East—see the stockholders. I don't remember calling their attention particularly to the fact. I remem-
673 ber making a statement of that kind; don't remember the words. I told him so for fear they wanted him, as he told me privately they would try to get him to sign bonds, deeds of trust, mortgages, curious papers that you had fixed up. They wanted him to sign, and he refused; so he told me. That was not called out before, or I should have told it.

"I don't remember telling Potter and Goodspeed, after I returned from the East in spring of 1869, that I did so, so that they could not get service. They said, first, report this thing to the stockholders. All hands wanted it done. You (Teller) once told me that you thought I discharged him so that bank could not get service. C. B. Kountze asked me to call on his brother—that was the arrangement—the brother that was going from Omaha to New York. I thought he was president. I called on him in New York a day or two before the stockholders' meeting. I first saw the clerk; pretty soon after, Luther came in and went out, and said his brother would be in directly; and his brother next morning called
674 at the Astor House and left his card. I was not in. I think it was 'Kountze Bro's' on the card. He and his brother both called at the Astor House, and, I suppose, went on down to the bank.

"I went down; saw him that day; told him when the stockholders would meet. I saw him, I think, the day of the meeting, and the day after meeting saw Augustus Kountze. I asked him why he did not come up. He was busy, & said he would just let the board act in the matter. He seemed to care; wanted them to act at once, of course. I told him I was sorry the board did not believe the money was loaned at all; they did not believe the bank would loan any such amount of money without authority—rather laughed at the idea—and adjourned the meeting till next day. I told him the stockholders would not stand the debt, and repudiated it entirely. I think I told him. I only talked with Augustus. I went and told him next day after the meeting. The meeting was first Tuesday in April, and continued two days. Afterwards we had an
675 election. I have seen the affidavit for continuance; read it since last trial. In this I swore that president of defendant called a meeting of directors of defendant. It was convened and had, and the matter of the indebtedness fully explained and laid before them, and directors of defendant fully ignored and denied the claims of plaintiff; and that the president of plaintiff and his brother Luther or Augustus, then in New York, were fully notified of the refusal of the directors to

pay or in any way recognize the claim of plaintiff; that I could prove these facts by no other witness than Potts. I think I swore that Potts was the only witness by whom I could prove the repudiation.

"I swore to the whole of that affidavit. It did not all apply to Potts—the first portion—when he made the contract with Sabin; this the whole of the facts. Sabin came in after the general talk with all of us. I was not in New York when that directors' meeting was held. If that affidavit says there was no formal meeting of directors at all, just a meeting of directors, and the matter laid before them, and they refused to pay
676 it, I swore to it. I did write to Warren to call a meeting. I suppose I swore to it.

"Mr Potts is living; he is not here. If I had Potts here he would corroborate it. I knew a portion of the fact. I had notified Kountze of the repudiation. I knew when I made the affidavit that I had been to Omaha and notified Augustus Kountze. I did not know that I had seen Herman at all. Neither C. B. Kountze nor Goodspeed had been notified of anything but the directors repudiating. This was directly after the shareholders' meeting. I swore to the whole of that affidavit. If you would read the balance of it, I expected to prove the meeting and repudiation by Potts. I intended to cover the arrangement between Sabin and Potts; that is all in the affidavit together.

"Potts told me a great many things not in deposition. He told me he would come out here at the time and be at the trial; he has not been here. There were other things I could prove in that affidavit
677 by Potts I did not know then even from Kountze Brothers. I did not see Herman Kountze. I notified Augustus both at New York and at Omaha of the repudiation, think the next day after the meeting. He asked me to see the directors again—we had elected a new director—and talk the matter over with the directors. I agreed to do so. I never wrote him a note in my life.

"I had business in S't Joseph; came by S't Louis; had business in Council Bluff; stayed over there and went over. The only time I was in Omaha that spring was on my return from the East. I telegraphed Butler at that time from Omaha. The Kansas Pacific was not finished. I went down—I am not sure but we went down below Sheridan to get on. I know I did not stop at Omaha till the 4th May. I did not say to Augustus Kountze at Omaha that the debt ought to be paid. I said the company utterly repudiated it. He said they had already brought suit and enjoined the ore. I went and notified
678 Royle & Butler to defend it; notified them by telegraph. I never was in Omaha, in the bank, but once that spring; was not in Omaha but once that spring.

"I think when I told Augustus Kountze in New York of the repudiation, I think he asked me when directors' meeting would be; told him I could call finance committee together at any time. I asked him to come up. He said he was very busy; said he was going away in a day or two. I don't remember whether I ever wrote any letters about the debt afterwards or not; could tell if I saw the letters. I think I wrote to Sabin about this matter. I think I notified him that the company had repudiated it; I am not sure. I think Augustus Kountze told me when in New York that he was a large owner in plaintiff' bank, and I think Goodspeed told me had some interest."

(Letter handed to witness:)

"This is my writing in pencil; it is a pencil letter. I wrote it. I suppose it was written at the time it was dated. I see the date has been altered."

679 Plaintiff here showed the letter to witness. Defendant objected for same reasons as last before assigned. The court allowed the plaintiff to ask the witness about the first ten clauses of the letter, and the defendant then and there excepted to the ruling of the court.

Witness Becker testified: "I wrote that letter at the date it purports to be written. I wrote to Sabin April 10th, 1869, 'Our election took place Thursday, resulting in election of same officers; on Wednesday, our finance committee. New York laws require ⅔ vote to issue bonds, levy assessments, &c. I control a little over ½, not quite ⅔, so I have to pay or buy or get enough so the assessment can be made. I have written to the weaker holders to either buy them out or get proxies. This may detain me a few days longer; will write this week.'

"I wrote that the regular meeting of stockholders was on Monday. They adjourned over, as I told you. In this one the election took place on Thursday. Our election took place on Monday. This letter
680 is written both Tuesday & Monday; one is written over the other; and then it says here the election of same officers on Wednesday. It must have been written after I notified M'r Kountze. It was my object to see if an assessment could be made at all, to satisfy Kountze about the matter. The board of directors would have nothing to do with the board of stock.

"I say if I paid any debts made by Sabin, it was for mill-machinery. I don't remember now how much I paid that way. I remember paying for a pump. I don't know whether I paid for anything else or not. I might have bought some picks or shovels for fixing our cistern. M'r Sabin paid all those other bills. I don't remember whether I paid Reynolds or not for powder got between time last bill was brought & 16th December. I gave Sabin the money; have his note for it now; he took receipts.

"I might have testified on former trials that I paid some of those bills myself. I can tell if I can see receipt. I furnished my own money.
681 The company did not furnish any money at all. I don't remember what I testified on this point before. I always paid greenbacks; had no bank account in Central with anybody. I checked on my banker in New York, sometimes the S't Nichel's Bank.

"Potts is my private banker; he is a coal-dealer in New York and banker for me. I sometimes drew checks and drafts on him. I paid in greenbacks. The drafts were drawn some on the S't Nicholas bank and some on F. A. Potts, 110 Broadway; some marked treasurer in the margin by direction. There is a little sign on his door—large building, great many offices—that is the reason, so that the young man carrying it would know when to hand notice in. I have often done that. Treasurer was on it. There are two or three signs there—Treasurer of Union Co., and of a coal co. I referred to my treasurer then. I don't remember that I ever drew a draft on him as treasurer of Union Company. I might have done it.

"I don't know how many drafts I drew on Potts as treasurer &
682 had them cashed in Central. It might have been $3,000, or $4,000. They were not all drawn on treasurer. I think I always signed them 'T. H. Becker;' I did not sign them 'president,' that I am aware of, so that the funds might be kept separate. I am doing that all the time. I don't know how many drafts I have drawn on Potts in that way; would not say whether they were all so or not.

"I had two funds. I kept 5.20 bonds, and as soon as it amounted to enough sell a bond. I would make overdraft until it absorbed a bond or such a matter, and order him to sell a bond. I know W'm Nichols;

have seen him during this term of court; had a conversation with him at Bert's store about Bates' mine; I remember he called on me; never had but one talk with him that I remember; it was in 1869, I think, after suit commenced."

Plaintiff here asked the witness to "state whether you told him that the company never had leased or rented this mine and never would."

Defendant objected to witness answering. The objection was
683 overruled by the court, and defendant then and there excepted to the ruling of the court.

Witness then answered: "I don't really remember what I did say to him. I was very busy. I think I said to him the company did not want to lease the mine; don't know what I said; would not like to state. There was many such conversations happening all the time that I can't remember all of them. I really don't recollect what I did swear on former trial. I invariably, when they came to me, told them I did not want to lease. I understood all that time that Nichols was going to lease the mine from you and the bank. I don't recollect what the conversation was between me and Mr. Nichols; think I told him I did not want to lease it."

Plaintiff here asked the witness: "Did not you, before you went east, state to Charles B. Kountze that you was going to try and sell this ore to Hill and try and settle up the debt?"

Defendant objected to witness answering. The court overruled
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Witness then answered: "I don't remember having any such conversation. I swore in the affidavit for continuance that from the time Sabin was appointed until the time he quit, from the time he commenced during the time aforesaid, Potts, as treasurer of defendant, never authorized the said Sabin either to draw on him, the treasurer of the company, for fifteen hundred dollars or any other sum. I expected to prove it by Potts."

Here the witness Becker made the following statement:

"I never knew whether Sabin began work in August or January, what time he commenced. I want to explain that. I don't know; he told me he began in August and afterwards said on account of measurements that had been made he did not think he began till January. He always represented to me that a portion of the debt was incurred in working No. 3, my claim. Sabin told me he began in August. If I said January yesterday I want to correct it now. Sabin told me
685 afterwards. I could not know when he began only from his say so. I never was to the mine to see when the work was done. I did not want the impression to go about that I made the statements."

Defendant here read in evidence to the jury the letter identified by Becker and hereinbefore copied, and also the following letter identified by Becker and marked by the court:

Marked "M H."

CENTRAL CITY, 25 *June*, 1867.

FRIEND BECKER:

DEAR SIR: I have been quite busy; hence my silence. On my return I got the keys of the shaft-house from Elliott and examined the mine thoroughly with Miller & Thompson, and concluded to give it a trial. After using my own pocket money I borrowed some money from M'r Hense and other friends and started up; got the water out and have

had a few runs; think I shall make it pay. If I don't, shall shut it down.

You will please remember me kindly to M'r Potts & tell him I
686 thought I should accept his kind offer to loan me ten or fifteen hundred dollars, but I have concluded to run it on my own responsibility and give it a fair trial; but I cannot promise to lay up any of the first-class ore as tribute until I pay all outlays and refund the money I have borrowed here. Then shall begin to lay up ores for tribute as per understanding.

If I had the mill and machinery on the mine, as I suggested, I could make it pay me well besides laying up a pile of tribute ore. But I suppose from what they talked they propose to wait and see what I can do first.

M'r Potts told me if I made the Bates pay and had anything as good myself, he would place it for me. I shall do as I proposed and give him the opportunity.

Your most ob't,

GEORGE K. SABIN.

Defendant here called JOHN F. TOPPING, who was sworn as a witness, and testified as follows:

"I live in Central City; am acquainted with property of defend-
687 ant on Bates Lode; know Geo. K. Sabin. M'r Sabin once employed me to stop in the compa'y's office when he went east. I was there *I was there* 7 months. I went there in the spring of 1866. I believe it was in April, 1866. Sabin employed me, I suppose, for himself. He told me he wanted me to stop in the office until he returned or I was relieved by some one.

I received pay by a $600 certificate of deposit; he left it with his brother in Chicago. I don't know who signed the certificate or how it read at all now.

"I was east when Sabin returned here, in Indiana. We passed each other on the plains, but I did not see him. I returned about the 1st August, 1867. I went in December, 1866. I had letters from Sabin after I got home and he had returned to the mountains. I have not the letters now. I suppose I destroyed them. I received communications in those letters in regard to starting up Bates Mine. I think it must have been in January, 1867—was about the time. I received his
letter may be in December, 1866. He said he was going to start
688 up the Bates Mine, and wanted some money—wanted me to loan him a thousand dollars. He said he had returned and was going to start at the Bates Mine on his own account, and wanted some money until he could get the thing going. I replied to the first, & received a second letter from him. I wrote him I would return shortly and let him have the money.

"In the second letter he said he did not want the money of me; that he had got a thousand dollars of Hense. I believe that is all the correspondence we had.

"I returned about the 1st August, 1867, and stopped with Sabin at the Union Company's office most of the time; slept there. M'r Sabin was there. I remained till some time in November, 1867. While I was there I had several conversations with Sabin. He told me he was running the mine on his own hook. I don't recollect how many times he said so; several times. I went with him to the mine once or twice. I have ore piled up at the mine. He stated to me that that ore was

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689 the Hill ore, as he called it; that went to the company, & kept the mill ore for himself.

"I can't tell how may times Sabin spoke to me of running the mine on his own hook; it was a subject of conversation between us several times. I don't remember at what date I went to the mine with him; it must have been in the fall, perhaps first of September, 1867, about the time they were building the new ore-house to put the Hill ore into. I don't remember seeing any account-books kept in the office while I was there.

On cross-examination witness Topping testified:

"I believe Sabin told me that Goodspeed kept his books or Messenger. I never saw any check or receipt-books there."

The defendant here called THOMAS H. POTTER as witness, who testified as follows:

"I have already stated what my business was in 1867 & 1868. I have not made an examination of our books to see how the account stood at 1st day of January, 1867. There may have been an account
690 at our bank January 1st, 1867. I was not there. The account was opened when I went there.

"I have not looked at the account since I was on the witness-stand. I presume I swore on the last trial what the balance was on 1st October, 1868; it was 1st or 3d."

(Witness handed pass-book.)

"This is the bank pass-book of the Union Gold-Mining Company with Rocky Mountain National Bank. I think I made the entries in it the last month or two myself; before that it is partly Goodspeed and partly Reynolds. Think Goodspeed was cashier then & Reynolds book-keeper. First date is March 6th, 1867; last date is October 31st, 1867."

(Witness handed another pass-book.)

"This is a continuation of the same account. These entries were made some by me, some by Goodspeed & Collins, officers & employees of plaintiff. This commences November 1st, 1867, and last January 1st, 1869; December 31st, 1868, is the last entry. These books contain the credits and debits of the Union Gold-Mining Company with Rocky Mountain National Bank; transactions with Sabin as the agent of the company is the way the accounts were kept. The Union Gold-Mining Company and Rocky Mountain National Bank transacted the
691 business. M'r Sabin, as agent, transacted the business with us. On first day of January, 1868, the balance was $4,687.78; Feb'y 1st, $4,461.93 due banks; March 1st, 1868, $1,191.27 due banks; April 1st, 1868, $2,106.91 due bank; May 1st, $1,267.37 due bank.

I think I am not mistaken about balance April 1st. There is no erasure there. That is marked out. There was a credit for two notes you spoke of. I can't tell how long they remained on the books. Either Collins or I marked them out; can't tell when."

Defendant here asks, "What was the capital stock of your bank in the years 1867 & 1868?"

The plaintiff objected to witness answering. The objection was sustained, and the defendant then and there excepted to the ruling of the court.

Defendant here offered to prove by the witness on the stand that the capital stock of plaintiff in the years of 1867 & 1868 was $50,000 & no more. The plaintiff objected and the court sustained the objection, and the defendant then and there excepted to the ruling of the court.

On cross-examination witness Potter testified as follows:

"Those books are in the same condition that they were when used by Sabin in name of defendant. They are, Rocky Mountain National Bank in account with the Union Gold-Mining Company, orge K. Sabin, agent. That is just as they were when the books re started and the entries made. The two notes $10,000 are the ne I mentioned on cross-examination before. They were cancelled by court. They were never paid; no money paid on them."

The defendant here offered in evidence two notes, of which the follow- are copies:

,000.00. CENTRAL CITY, COL., *Oct.* 3, 1868.

On demand, after date, we promise to pay to the order of the Rocky ountain Nat'l Bank five thousand 00 dollars at their banking-house, th interest at per cent. a from until paid. Value received. No. 357 due.

UNION G. M. CO.,
GEORGE K. SABIN, *Ag't.*

On the back of which appears the following:

Surrendered open court for cancellation, & cancelled this 26th day of ov., 1872.

3 Ordered by the court.

JAMES B. BELFORD,
Judge, &c.

[Revenue-stamp, $2.50, cancelled.]

5,000.00.] CENTRAL CITY, COL., *Oct. 3d*, 1868.

On demand, after date, we promise to pay to the order of the Rocky ountain Nat'l Bank five thousand dollars at their banking-house, with terest at per cent. from until paid. Value received. 356 due.

UNION G. M. CO.,
GEO. K. SABINE, *Ag't.*

On the back appears the following:

Surrendered in open court for cancellation, which is accordingly or- ered.
Nov. 26, 1872.

JAMES B. BELFORD,
Judge, &c.

[Rev. U. S. stamp, $2.50, cancelled.]

The plaintiff objected to their introduction as evidence, and court sustained the objection. Defendant then and there excepted to the rul- ng of the court.

394 Defendant then called HUGH BUTLER, who was sworn as a witness and testified as follows:

"I was a practicing attorney in 1869; had an office in Central City; practice in this district. I have a dispatch which I received from Becker in the spring of that year. I have a dispatch received by M'r Royle & myself, about the 4th day of May, 1869, from M'r Becker. The telegram was dated Omaha, May 4th, 1869. M'r Becker arrived in Colorado about the time mentioned in the dispatch. I don't remember

the exact time. I would not trust myself to give the day of his arrival. The dispatch refers to other business—to another case. The best of my recollection would be that he arrived 4 or 5 days after I got the dispatch, more or less."

Defendant here called GILBERT B. REID, who was sworn as a witness and testified as follows:

"I have been practicing law for something over 20 years. I have been in State of New York; never practised there; have been in the courts in the city of New York on business connected with the
695 profession and with corporations."

"State if you have looked at this book," (handed to witness.)

"This is considered authoritative as the law of New York. Perhaps no edition is considered better authority there."

Defendant here offered in evidence section 3d of title 3d, chapter 18, Revised Statutes of New York; which said statute was admitted, and is as follows:

"S. 3d. In addition to the powers enumerated in the first section of this title and to those expressly given in its charter, and the act under which it is or shall be incorporated, no corporation shall possess or exercise any corporate powers except such as shall be necessary to the exercise of the powers enumerated and given."

The defendant then offered in evidence the following certificate of incorporation, to the admission of which the plaintiff objected. The objection was sustained by the court, and the defendant then and there excepted to the ruling of the court.

696 STATE OF NEW YORK,
City & County of New York, ss:

[Int. rev. stamp, five cents.]

We, Edwin Crosswell, George H. Potts, Samuel B. Hare, Leverett E. Rice, Edward A. Quintard, John E. Keeler, Thomas M. Wheeler, Edward T. Sanford, and Theodore H. Becker, do hereby certify that we desire to form a company pursuant to the provisions of the act of the legislature of the State of New York passed February 17th, 1848, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," and the several acts amending or extending the same.

And we do hereby certify as follows, viz:

First. That the corporate name of the said company is to be the "Union Gold-Mining Company of Colorado.

2nd. That the objects for which the said company is to be formed are the working and developing of gold-mines and gold-bearing veins and claims situated in Gilpin County, in the Territory of Colorado;
697 the raising, extracting, and producing from said mines, veins, and claims all gold and other metals, ores, and minerals found therein; the preparation of the products of such mines, veins, and claims for market, and generally the doing of any and all acts and things connected with or incidental to the management & prosecution of the said enterprise.

3d. That the amount of the capital stock of the said company is to be twelve hundred thousand dollars.

4th. That the number of shares of which the said capital stock is to consist is twenty-four thousand shares of fifty dollars each.

6th. That the term of the existance of the said company is to be fifty years from the date of its formation.

6th. That the number of trustees who shall manage the concerns of the said company for the first year is nine.

698 7th. That the names of such trustees are Edwin Croswell, George H. Potts, Samuel B. Hare, Leverett E. Rice, Edward A. Quintard, John E. Keeler, Thomas M. Wheeler, Edward L. Sanford, and Theodore H. Becker.

8th. That the operations of the said company are to be carried on in the city of New York, in the State of New York, and in Gilpin County, in the Territory of Colorado.

The principal part of the business of said company within the State of New York is to be transacted in the said city and county of New York. The active mining operations of the said company are to be carried on in said Gilpin County, Territory of Colorado.

In witness whereof we have hereto subscribed our names this twenty-seventh day of February, A. D. 1864.

EDWIN CROSWELL.
GEO. H. POTTS.
JNO. E. KEELER.
L. E. RICE.
SAMUEL B. HARE.
E. L. SANFORD.
699 E. A. QUINTARD.
T. H. BECKER.
T. M. WHEELER.

STATE OF NEW YORK,
City and County of New York, ss:

[Int.-rev. stamp, five cents.]

Be it remembered that on the 27th day of February, A. D. 1864, before me personally came Edwin Croswell, George H. Potts, John E. Keeler, Leverett E. Rice, & Samuel B. Hare, and on the 29th day of February, A. D. 1864, before me personally came Edward L. Sanford, Edward A. Quintard, Thomas M. Wheeler, and Theodore H. Becker, to me known to be the same persons discribed in and who executed the foregoing certificate, and to me severally acknowledged the execution thereof.

HAMILTON ODELL,
Notary Public, New York City.

(Endorsed:) Filed February 29th, 1864.

700 STATE OF NEW YORK,
City and County of New York, ss:

I, Henry W. Ganet, clerk of the said city and county, do certify that I have compared the preceeding with the original cert. of incor. of the "Union Gold-Mining Company of Colorado" in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof I have hereunto subscribed my name and affixed my official seal this 1st day of March, 1864.

[NEW YORK, SEAL.] H. W. GANET, *Clerk.*

[Revenue stamp, 5 c.]

(Endorsed:) Filed June 6th, 1867. Harper M. Orahood, county clerk.

The defendant here offered to prove that the two notes in question were cancelled at the request and instigation of the plaintiff in this case, and before the trial commenced, one year ago.

701 The plaintiff objected, and the court sustained the objection, and defendant then and there excepted to the ruling of the court.

Here defendant rested.

Plaintiff, in rebuttal, offered to read in evidence part of the deposition of Augustus Kountze & Luther Kountze, as to the notice of repudiation Becker states he gave him. Defendant objected. The court overruled the objection, and defendant then and there excepted to the ruling of the court.

Plaintiff recalled JOSEPH H. GOODSPEED, who testified as follows:

"I was here nearly all the time M'r Becker was testifying, and heard his testimony. I heard it in relation to reading a letter to me stating the repudiation of the debt by defendant. I never had any such conversation with Becker. He never read to me any letter from Werner to my knowledge. I heard him swear that he repeatedly told me of the
702 repudiation. He never did anything of the kind."

On cross-examination, witness Goodspeed testified:

"I said, in my examination the other day, that Becker promised to lay the matter before the board of directors. I never heard from the company at all after Becker went east. I never told Sabin, in January or February, 1869, that Becker had received a letter from defendant in New York, stating that they utterly repudiated and would have nothing to do with the debt, & that Becker said he would have to spread the matter before the meeting of the stockholders, and state the matter of the claim to them.

"I did not tell Sabin that I wanted him to use all his influence with Becker to have him go on & have the matter attended to; that it placed me in a very bad position. Never had any such conversation. I never had any conversation with Sabin, in which I told him that Becker had told me that the company repudiated the debt.

703 "I now live in S't Joseph. I am a stockholder in the bank. I hold $8,000 stock in the bank. I have had it for a good many years. I have not stated within five days in Central that the bank held my stock to await the result of this suit."

Plaintiff then called T. H. POTTER, who testified:

"I heard Becker's testimony about what he told me about writing to the directors, and that he would not recognize the claim, &c., & that Sabin had no authority. I heard him so testify, but he did not make any such statement to me in the conversation. I first heard it in court, on the former trial."

Plaintiff then called CHARLES B. KOUNTZE. Plaintiff asks this question: "Did you hear Becker testify that he notified you that the directors of the company repudiated the debt, and refused to have anything to do with it?"

The defendant objected to witness answering, because it is not rebuttal. The court overruled the objection, and the defendant then and there excepted to the ruling of the court.

704 Witness answered: "I did, and I say he never notified me until the year before the last trial. It must have been nearly two years after the suit was brought. I heard him testify that he so notified me when he returned from the East. I say he did not so notify me. I heard him testify that *he* I requested him to go and see my brother

in New York, &c. In one of our conversations he at one time inquired whether any of my brothers were in New York. I told him some of them were. He wanted to know whether I would be pleased to have him call on them. I said I did not care, or I would be very glad; something of that kind. That is all I remember of it. Becker never told me that he could not recognize this debt as that of the company, nor that Sabin had no authority."

On cross-examination, witness Charles B. Kountze testified:

"Becker never notified me that the company repudiated till
705 the year before last trial.

"Becker met me in the back room of the bank, in Denver, on his return from New York. I don't remember what time that was. We then talked of this matter. He did not then tell me the stockholders would not make the assessment; he said he was unable to get sufficient stock to make the assessment, but that he intended to have it made and that they intended to pay the debt. I did not say that my brother Augustus was not authorized to represent us in New York."

Defendant here asked the witness this question, "What do you say now: were not the statements of account between the plaintiff and defendant sent to your brother in New York, and Omaha, too?"

The plaintiff objected to witness answering, the court sustained the objection, and defendant then and there excepted to the ruling of the court.

The defendant then offered to prove by this witness that "not only was Becker authorized to call upon his brother in New York,
706 but his brother in New York was furnished with a statement of this account and authorized to represent this plaintiff there."

The plaintiff objected, the court sustained the objection, and defendant then and there excepted to the ruling of the court.

Plaintiff then called WILLIAM NICHOLLS, who was sworn as a witness, and testified as follows:

"I know Becker; knew him by reputation in spring 1869. I called on him at drug-store of John Best in Central City, in spring of 1869, to try to lease of him the company Bates mine; I asked him if he would lease it."

Plaintiff then called JOHN O. REYNOLDS, who testified:

"I heard the testimony of Becker that he never paid any debts contracted by Sabin prior to December 16, 1868, and I am sure he paid me $290 & over for powder & fuse at one time; $218 of it was of that date; it was paid in February following."

707 On cross-examination witness Reynolds testified:

"I am very sure in regard to that matter. I know he paid me several bills, and good deal of it was for stuff he bought of me himself. The fuse amount of the bill, $189.25, was furnished 1st December, and one charge 18th December; have a memorandum of it.

"I wish to correct my testimony of the other day. The $150 did not pay the full account of the bill; it did pay in full for November."

(Receipt shown witness.)

"The main part of that is in T. H. Messinger's handwriting; it is a receipt for $150.00; this balance' the account for November for 20 kegs powder. The powder was delivered in November. Becker took possession of the mine about middle of December. Becker returned me some powder that was got on 1st December. On December 1st, 1868, he got

$218 worth of powder & fuse. M'r Sabin got it, & after that he returned, in powder, $16.75, which I gave him credit for; this was returned in January or the first part of February; it must have
708 been returned January 1st, 1869, for Becker account got 1 keg of powder & 100 f't fuse. All charged to Union Gold Mining Company, same way; & they got some wire rope & more powder afterwards.

"In September, afterwards, they got some stuff. On first February, 1869, he paid me—somebody paid me—and in my mind it was Becker paid $189.25; and that account commenced the first day of December; the whole bill for December amounts to $251, paid $189.25 in cash, left $45; and he did not pay that till 'way next September, when he paid me $191.90; there are 2 or 3 different charges in December. Then January 1st, 1 keg powder; & in August, 1869, they got some wire rope. In September they got some more powder & stuff, $82.50; some of that was returned and some discounts made on wire rope, this last when he was running the mine in August and September; he paid me the balance himself down at his shanty. I know one charge
709 of $218 is the first day of December; it is so on our books; I don't know it any other way; I can't remember; I just looked to the ledger; did not go to the day-book for the items; I turned to the ledger and found he had paid the November bill in full; got that 20 kegs of powder and returned part; did not get his bill; had powder on hand and did not want any; that receipt just balanced the November bill xactly; this is the check."

Here defendant offered in evidence cross-interrogatory 126, and the answer thereto, of Sabin deposition, to which the plaintiff objected, because it has been stricken out by the court and suppressed. It is not relevant. The court sustained the objection, and defendant then and there excepted to the ruling of the court.

Which was all the evidence given in said cause.

The defendant then moved the court upon the evidence aforesaid, to instruct the jury as follows:

710 If the jury believe from the evidence that George K. Sabin entered into an arrangement or agreement with the defendant in the city of New York, whereby he was to come to this Territory, and if he so elected to do he could enter into possession and work the mine of the defendant at his own expense, and not at the expense and on account of the defendant, and pay to the defendant a certain portion of the ore taken from the mine for the use of the mine, and pay himself and all the expenses of working the mine from the balance of the ore taken from the mine; and that under the arrangement or agreement so made with the defendant the said Sabin entered into and worked the mine of the defendant, then the relation existing between the said Sabin and the defendant was not *of that* principal and agent, but that of landlord and tenant, and is governed by the same law as in
711 cases of working land for share of the crops, and the said Sabin became the lessee of the defendant, and the said defendant is in no way liable for any sum of money borrowed by the said Sabin, and cannot be made liable without a special promise in writing made and signed by the defendant.

2nd. If the jury believe from the evidence that George K. Sabin made an arrangement or agreement with the defendant whereby he was to enter into the mines of the defendant and work and mine the same, on his own account, and was to mine and deliver on the top of the ground

all the first-class or smelting ore as rental or tribute for the use of the mine of the defendant, and was to receive no salary from the defendant for his services, but was to pay himself and all expenses of working the mine from the proceeds of the balance of the ore mined from said mine, and that the defendant was not to furnish any money for the working of said mines, and that Sabin was to contract no debts charg'able
712 to the defendant, but was to quit work on said mines whenever he could not pay all the expenses and pay himself from the lower grades of ore, then the jury must find for the defendant, unless they further find from the evidence that the defendant in this suit after said debt was contracted by Sabin assumed it and promised the plaintiff in writing to pay the same.

3d. If the jury find from the evidence that the defendant was and is a foreign corporation, organized and existing under the laws of the State of New York, and that George K. Sabin was its agent in the Territory of Colorado, they must find for the defendant, unless they further find from the evidence that the agent Sabin, by virtue of his agency under the provisions of the charter of the defendant, was clothed with the power of contracting debts by borrowing money in the name of the defendant, or that a special authority was conferred by the defendant corporation upon Sabin to borrow money in its name and on its
713 account, or that the plaintiff bank was authorized by the defendant corporation to loan money to Sabin on checks drawn by Sabin in its name, or that prior to Sabin' dealings with the plaintiff Sabin had, in the name and on the account of the defendant, borrowed money from other parties in the same manner, and that the defendant had, with full knowledge of the nature of the transaction, recognized debts so contracted by Sabin as its debt and paid the same, and that the plaintiff had knowledge of such transactions on the part of Sabin and the defendant prior to and at the time of its dealings with Sabin, or that the defendant after the dealings of Sabin with the plaintiff, with full knowledge of all the material fact', adopted the acts of Sabin in his dealings with the plaintiff, & promis'd the plaintiff to pay it the debt contracted by Sabin.

4th. If the jury believe from the evidence that Geo. K. Sabin was the mining agent or superintendent of the defendant in Colorado, then the court instructs you that as such agent or superintendent Sabin had no power or authority by virtue of such agency to borrow money in
714 the name of the defendant, and that the jury should find for the defendant, unless they further find from the evidence either that the defendant corporation invested Sabin with special authority to borrow money in its name and for its use, or that the defendant afterwards, with full knowledge of all the material facts, ratified and adopted the acts of Sabin in his dealings with the plaintiff in its name.

5th. The court instructs the jury that a corporation is bound by the contract and act of its agent so far as the agent acts within the scope of the authority actually conferred upon him by the corporation, but no further.

6th. If the jury finds from the evidence that George K. Sabin was the agent of the defendant, and was employed by the defendant to manage its mines, and that he was instructed by the defendant to work the same so long, and only so long, as he could work the same and pay all
715 expenses from the 2d & 3d class ore, and put aside the 1st class ore, and to quit and abandon work when he could not do so, and that he was further instructed to contract no debts, then that the said Sabin was a special agent of the defendant, acting under limited and circumscribed authority, and that the defendant is not bound by any of his acts

exceeding the limits of the authority conferred upon him by the defendant.

(7th. The 7th instruction to the jury is crossed out in original record in clerk's office.)

JNO. W. WEBSTER,
Clerk Supreme Court.

8th. The court instructs the jury that time can be no ratification of the unauthorized acts of another by silence or acquiescence, unless the party sought to be charged had full knowledge of all the material facts necessary to a complete understanding of the transactions, and that the burden of proving such knowledge in the possession of the party sought to be charged is in the party claiming such ratification, and, there-
716 fore, if the jury believe, from the evidence, that the defendant corporation had no knowledge prior to the 16th day of April, 1869, when this suit was brought, that the money obtained by Sabin from plaintiff was employed and used in working the west half of the Discovery claim, and claim numbered three west on the Bates lode, and running the Douglass mill, and in paying Sabin a pretended salary, and as hire for the use of his engine while doing his own work, then that silence on the part of the defendant, and a failure to disown or repudiate the demand of plaintiff, cannot be considered as any evidence of ratification on its part of the acts of Sabin in contracting the liability in question.

9th. The court instructs the jury that if they believe from the evidence that an arrangement was made between T. H. Becker, president of the defendant, and the officers of the plaintiff, whereby Becker was to submit the claim of plaintiff to the shareholders of the defendant at
717 their annual meeting, and that the meeting was held in New York on the 5th day of April, 1869, and that this suit was commenced in this Territory on the 16th day of April, 1869, then that the jury are to consider these facts in determining whether the plaintiff had notice of the result of the meeting of the shareholders, and then *disowned* or repudiation of the claim of the plaintiff at such meeting so held on the 5th day of April.

10th. If the jury believe from the evidence that on the 16th day of December, A. D. 1868, T. H. Becker, the president of the defendant, communicated to his company, in New York, by letter, the claims made by plaintiff against the defendant on that date to him, and received from the officers of the company, in New York, letters disowning & repudiating the transaction, and communicated such disavowal or repudiation to the officers of plaintiff, then such communication of the disavowal or repudiation was notice to the plaintiff *if* the fact of such disovowal or repudiation on the part of the defendant, and that in determining
718 whether or not such disavowal or repudiation was communicated to the officer or officers of plaintiff, the jury will take into consideration all the evidence in regard to conversations had between officers of the plaintiff and the president of the defendant, up to the 19th March, 1869, in regard to the president of defendant going to New York, calling a meeting of shareholders of the defendant, and laying the matter before them at the annual meeting in April, 1869, and trying to get them to assume and assess the stock for its payment.

11th. The court instructs the jury that silence on the part of the defendant, after having been informed of the claim of the plaintiff, and failure to disown or repudiate the claim when informed of its existence, do not of themselves constitute a ratification of the acts of Sabin, nor

render the defendant liable to pay the debt, and that such silence and failure to disown are at best but evidence to be considered by the jury, in connection with all the other evidence on that subject, in de-
719 termining whether or not the defendant intended to adopt and ratify the acts of Sabin in contracting the debt in question.

12th. The court instructs the jury that where the duties and powers of a corporation are created or regulated by the act of incorporation or the by-laws of a company, persons dealing with such officers are chargable with notice of all the limitations and restrictions upon his authority contained therein, and the burden of proof is upon them to show that debts contracted by him are debts of the corporation.

13th. The court instructs the jury that the plaintiff, in dealing with the agent of the defendant, was bound to inquire into the nature and extent of his agency, and if plaintiff failed to make such inquiries and remained in ignorance of the real extent of the agent's authority, it is no excuse in law, and the want of such knowledge on the part of
720 the plaintiff cannot prejudice the defendant in this suit.

14th. The court instructs the jury that if they find from the evidence that George K. Sabin was the agent of the defendant, duly appointed and empowered to conduct and manage the business of mining at their mine in Colorado, that that alone would not authorize the agent to borrow money on the credit of the defendant, and that they must find for the defendant unless they further find from the evidence that the agent, Sabin, was specially authorized and empowered by the defendant to borrow money in its behalf, or that the defendant afterwards ratified and adopted the act.

15th. The court instructs the jury that if they believe from the evidence that George K. Sabin was the agent of the defendant, and, while acting as agent, borrowed the sum of money in controversy of the plaintiff and expended the same in the business of the defendant and
721 in paying its debts, that the money so advanced by the plaintiff, though so applied, created no debt against the defendant; but that the jury must further find from the evidence (before they can find for the plaintiff) in addition to the mere facts of the loan from the plaintiff to Sabin and the application of the money for the benefit of the defendant, that the defendant had authorized the plaintiff to loan the money to Sabin, or Sabin to borrow the money in controversy from the plaintiff, or had afterwards ratified and adopted the act.

16th. The court further instructs the jury that if they find from the evidence that George K. Sabin was the agent of the defendant, duly appointed to work and manage its mine, and further find from the evidence that, as such agent, he had authority to contract debts in the name of the defendant for goods, supplies, and labor necessary in prosecuting the work of mining, that these facts alone will not warrant them
722 in finding for the plaintiff; that they must further find from the evidence that Sabin had a special authority from the defendant to borrow money in its behalf, or that the defendant has since ratified the act.

17th. The court instructs the jury that in case of a revocation of a special or limited agency, the law does not impose on the principal any duty of publishing or giving any general notice of such revocation or dissolution of such agency, and any omission to give such general notice will not render the principal liable for any acts done in the name of such principal & with others than those with whom such principal had had dealings through such agent before such revocation or dissolution, even if such subsequent dealings by the pretended agent were done

within the limit of such special power of the person who had before that time been such special agent, unless such special agency was constituted in writing and the person who had been so constituted agent had
723 been permitted to retain the writing so appointing him such agent, and by means of such written appointment had fraudulently held himself out as still being such agent and by that means procured the money in controversy.

18th. The court instructs the jury that to prove a ratification of a contract made without authority from the defendant corporation, it must clearly appear from the evidence in the case that the defendant had full knowledge of such contract, and that such acts of defendant, relied upon by the plaintiff as a ratification, were intended by said defendant to relate to the performance of such unauthorized act.

19th. The court instructs the jury that even if they do believe from the evidence that George K. Sabin was the agent of the defendant and was also authorized to draw checks in its name, and did in fact draw them in the name of the defendant and directed the same to the plaintiff, when the defendant had no funds in the possession of the plaintiff
724 against which said checks were drawn, the officers of the plaintiff paid said checks out of the funds of the plaintiff, said acts of Sabin, and also the act of the plaintiff's officers in paying the same out of said funds of plaintiff, were illegal acts, and were in violation of law, and the plaintiff is not entitled to recover against the defendant in this form of action.

20th. The court instructs the jury that even if they do believe from the evidence in this case that George K. Sabin was the general agent of the defendant and was duly authorized to draw checks in the name, and did in fact draw them in the name of the defendant and directed the same to the plaintiff when the defendant had no funds in the possession of the plaintiff out of which to pay the same, such drawing was an illegal act on the part of Sabin, for he could draw on the plaintiff only when defendant had funds there against which to draw and out of which to pay the checks as drawn, & if Goodspeed, as the cashier of the plaintiff, paid the checks so drawn out of the funds of the plaintiff,
725 such payment was an unlawful appropriation of the funds of plaintiff by its officers and was not a legitimate act of banking and not authorized, but was prohibited and made a crime by the laws of the United States under which the plaintiff was incorporated and derived all its power and authority to do a banking business; therefore the plaintiff cannot recover in this action, for there is no law authorizing the plaintiff to waive a crime and sue in an action of assumpsit for money by its officer paid out in violation of a statute of the United States, but if it is entitled to recover at all in an action at law it must be a special action on the case and not in assumpsit, for when property or money is obtained by committing a crime there can be no assumpsit, either express or implied by law.

21st. The court instructs the jury that if they believe from the evidence that Sabin, while acting as agent of the defendant, or claiming to act as agent of defendant, by some arrangement with the plaintiff
726 or some of its officers, and without the knowledge or authority or consent of the defendant, draw checks, in the name of the defendant, upon the plaintiff when there were no funds or money in plaintiff' bank belonging to defendant out of which to pay said checks, and that some of plaintiff's officers paid such checks and charged the money so paid to the defendant without its knowledge or consent, and that this suit was brought for money so obtained by Sabin

from plaintiff by overdraft, then that such proceeding was a misapplication of the moneys of the bank by its own officers, for which they and their securities are liable to the bank, and a fraud upon the defendant, in which the officers of the bank participated, & that the plaintiff cannot recover in this action from the defendant, but must look for redress to its officers & their securities & those who participated in the transaction.

22nd. The court instructs the jury that when an agency is known
727 to have existed for any one purpose or business and there is no evidence tending to show that it had not been terminated, the law never presumes that such agency existed for any other purpose or extended to any other business, &, therefore, even if you believe from the evidence in this case that Sabin was at any time the agent of the defendant for working or superintending the working of the mines of the defendant and with the funds provided by the defendant, you cannot from that agency either presume or infer that such agency either existed for, or extended to, or in any way authorized Sabin to borrow money on the credit of the defendant, even for the working of such mines. An agent appointed to work a mine or superintend the working of mines is not thereby authorized to borrow money on the credit of the owner of such mine to work the same. Before you can find for the plaintiff in this case, you must be satisfied from the evidence: 1st, That the money in controversy was borrowed in its name; also, 2nd, That the act of borrowing was done by Sabin in the exercise and also within the
728 limits of the power conferred on him by the agency; or, 3d, That defendant corporation ratified the act.

23d. If the jury believe from the evidence that Theodore H. Becker wrote the letter of January 1st, 1869, directed to the president of plaintiff in his private capacity & not as president of defendant, and refused to sign the same as president, then that the writing of the letter was his own private act and not official, and nothing in said letter contained would be any more binding or obligatory upon the defendant corporation than the letter of any other stockholder or the letter of a stranger.

24th. The court instructs the jury that although T. H. Becker was president of defendant, his private acts, declarations, and promises are no more binding or obligatory upon the defendant than the acts, declarations, and promises of any other stockholder or stranger, and before the jury can find the defendant bound by any acts, declarations, or promises of Becker, they must find from the evidence—

729 1st. That such acts were done & declarations and promises made by Becker as president of the defendant in his official capacity with the intention of binding the defendant by such act, declaration, and promises.

2nd. That Becker, by virtue of his office of president of defendant, had, under the charter or by-laws of the corporation defendant, power to borrow money, and to bind the company by promising payment of money borrowed by others in its name by overdraft & without its knowledge; or,

3d. That the defendant corporation had specially empowered Becker to make the declaration and promises by him made, and that they were made for and in its behalf.

25th. The court instructs the jury that the paying out of the money of a bank by its officers upon overdraft is a misapplication of the funds of the bank by its officers, for which they & their securities are liable to the bank, & a proceeding that cannot receive countenance in a
730 court of justice so as to charge the money so paid to third par-

ties who had no knowledge of and not participate in the misapplication, nor receive the money so paid out.

26th. The court instructs the jury that if they find from the evidence that Sabin was the agent of the defendant for the purpose of carrying on its mine, and taking the ore from same & having it crushed & the gold taken out, then that Sabin had no right or authority by virtue of such agency to borrow money in the name of the defendant, & the jury cannot find the defendant liable for money so borrowed by Sabin, even if it was used in working the mine of the defendant, unless they further find from the evidence that Sabin had special authority from the defendant to borrow money in its name, or that defendant had subsequently ratified the act.

27th. The court instructs the jury that if they believe from the
731 evidence that from and after the 16th December, A. D. 1868, the plaintiff in this case suffered no loss, and its status was not changed, and the defendant received no advantage by its failure to disavow the debt in question and repudiate it to the plaintiff; and that during the time from December, 1868, to April, 1869, when this suit was brought, the only act attempted to be done by the plaintiff was to impose this debt upon the defendant and render it liable to pay it or get it to assume and promise to pay it, which would only be injurious to the defendant. Then, even if there had been no disavowal and repudiation of the debt by the defendant, the jury cannot presume a ratification by acquiescence and the neglect of the defendant to disavow the debt between the 16th day of December, A. D. 1868, & the time of bringing this suit by the plaintiff.

28th. If the jury find from the evidence that the plaintiff paid the checks of Sabin, drawn by him in the name of the defendant,
732 when there was no money in the plaintiff' bank to the credit of the defendant, and that such course of dealing was continued for a long time, and the money in controversy was obtained in that way, and that plaintiff not only did not notify the defendant, but kept the knowledge from the defendant, then that the plaintiff participated in the fraudulent act of Sabin in creating the debt and cannot recover in this action unless they find that the corporation, with a full knowledge of all the facts, ratified the acts of Sabin.

29th. The court instructs the jury that if they believe, from the evidence in this case, that the plaintiff was, at the time of the contracting the debt in controversy, a banking corporation under the laws of the United States, then it was limited by said laws to the business of banking and the exercise of such incidental powers as are necessary to carry on the business of banking, as by discounting or negociating promissory notes, dratts, bills of exchange, & other evidences of debt, as
733 limited by said laws of the United States, and the advancement of money to pay checks, drawn by Sabin as its agent, when defendant had no funds in the possession of the plaintiff out which to pay the same, is not legitimate power or duty, and the plaintiff had no power or authority under said law to advance the money to pay the checks so drawn, & therefore the plaintiff is not entitled to recover in this action for the money so advanced to pay such checks.

30th. If the jury believe from the evidence that Sabin was not the agent of defendant, or that he was the agent but exceeded his authority in borrowing money in the name of the defendant and the defendant failed to disavow the act and repudiate the debt, then that such silence & failure to disavow is not of itself a ratification on the part of the defendant, but it is a question whether such silence is a reasonable pre-

sumption of ratification, which will depend upon the question whether the plaintiff, from its previous course of dealing with the defendant, had reason to suppose the defendant would notify them if he did not
734 intend to notify it, and whether the delay and silence of the defendant worked any injury and was a fraud upon the plaintiff.

31st. The court instructs the jury that in case of a revocation of a special or limited agency the law does not impose on the principal any duty of publishing or giving any general notice of such revocation or dissolution of such agency, and any omission to give such general notice will not render the principal liable for any act done in the name of such principal has had dealings through such agent before such revocation or dissolution, even if such subsequent dealings by the pretended agent were done within the limits of such special power of the person who had before that time been such special agent, unless such special agency was constituted in writing and the person who had been so constituted agent had been permitted to retain the writing so appointing him such agent, and, by means of such written appointment, had
735 fraudulently held himself out as still being such agent, and by that means procured the money in controversy.

32nd. The court instructs the jury that even if they believe from the evidence in this case that Sabin has at any former time been the duly appointed superintendent of the defendant, and has had full power and authority to work the mines of the defendant, even then such agency was not a general agency, but only a special or limited agency, & it did not authorize him to borrow money on the credit of the defendant.

33d. If the jury believe from the evidence that George K. Sabin was the agent of the defendant & exceeded the special and limited authority conferred upon him by the defendant in contracting the debt with the plaintiff, his act', so far as the defendant is concerned, are even nullities & in no way bind the defendant, and the plaintiff cannot recover the money in controversy from the defendant unless the jury further
736 find from the evidence that plaintiff made due inquiries and used due diligence to ascertain from the defendant the extent of Sabin's authority, and that the plaintiff was misled by the defendant, and defendant held Sabin out as having the powers & authority to contract debts and borrow the money in controversy for & on account of the defendant, or that the defendant has, since the contracting of the debt by Sabin, ratified & adopted the act of Sabin in contracting the debt.

34th. If the jury believe from the evidence that Sabin was not authorized to contract in defendant's name the debt sued for in this case, & that about the sum of $7,000—part of debt sued for—was used and applied by Sabin in payment to himself for salary as agent of defendant, & that he was not agent and was not entitled to such salary, such amount so received by Sabin must be deducted from plaintiff' claim, even if you find for plaintiff, unless you further find that the de-
737 fendant, with knowledge of the fact that said Sabin received said seven thousand dollars for salary, adopted and ratified the whole debt claimed by plaintiff.

35th. If the jury believe from the evidence that one-half of the alleged overdraft for which this suit was brought was expended & obtained for the purpose of mining claim No. 3 west, on Bates lode, by the witness Sabin, under some arrangement between himself & Becker, & that the defendant was not a party to the same, the amount he used must be deducted from plaintiff' claim, even if you should find for plaintiff.

36th. If the jury believe from the evidence in this case that George K. Sabin was the mining agent or superintendent of defendant, then as

such superintendent or agent he had no authority to borrow money in its name & on its behalf, and the defendant can only be held liable upon proof that the board of trustees or directors of defendant had conferred upon Sabin a general authority to borrow money on its (defend-
738 ant') credit or a particular authority to borrow money from the plaintiff by checks & overdrafts, or that upon such lending & advancing of the money in controversy the conduct of the defendant corporation or company was such as to create a well-founded belief in the plaintiff that such general or special powers had been granted said agent or superintendent, & that knowledge of such acts of said defendant had come to & were possessed by plaintiff before lending & advancing said money; & if the jury do not so find, then they must first find from the evidence in this case that the acts of Sabin, the pretended agent, although unauthorized in the first place, were subsequently, & with full knowledge of all the facts relating thereto, ratified by the board of directors or stockholders of the defendant, & acting in a meeting thereof duly in session. The acts of an officer of a corporation do not bind such corporation unless such acts are within the scope of the authority & powers of such officers.

739 38th. The court instructs the jury that if they find from the evidence in this case that the defendant is liable for the debt in controversy, or any part thereof, then they must deduct the amount of the two notes for five thousand dollars each at the date thereof, and also the amount of the said debt in controversy that was paid Sabin for or as his salary as superintendent or agent of defendant, & also the amount of money advanced to Sabin by plaintiff & by Sabin expended in the development & working on claim number three west, & also on the east half of the Discovery claim on the Bates lode, as shown by the evidence in the case.

39th. If the jury believe from the evidence that the witness Becker, on behalf of defendant, promised plaintiff to submit its claim to the defendant at its annual meeting in April, A. D. 1869, for ratification or repudiation, & that he did so submit it at such meeting of defendant on the 5 or 6th day of April, and that the defendant
740 rejected said claim, & that the plaintiff commenced this suit before the expiration of a reasonable time in which Becker could notify it of the alleged repudiation, then the question whether Becker did or did not notify plaintiff of such fact is immaterial.

40th. If the evidence in this case is so conflicting that you cannot determine what party has the right of the issue, you must find for the defendant.

Which instructions & each & every of them the court refused to give to the jury; & to the refusal of the court to give the same, & to the refusal to give each & every thereof, the defendant then and there excepted.

And the court gave to the jury, at request of defendant, the following instructions:

1st. The plaintiff is bound to establish every material fact by a preponderance of evidence, & if it has failed to do so you must find
741 for the defendant.

2nd. The deposition of the witness Sabin having been taken out at the instance of plaintiff and read before you by its attorney, the plaintiff cannot be heard to say that he is unworthy of credit or belief.

And the court instructed the jury, at the instance of plaintiff, as follows:

1st. Whether Sabin was or was not the agent or superintendent of defendant is a question for the jury, to be determined by all the evidence before them.

2nd. If the jury believe from the evidence that defendant did know that Sabin was doing business in its name & claiming to be its superintendent, & allowed said Sabin to continue to do business in its name, then the relation of Sabin to the defendant is the same as if he had been in the first place authorized to do business in its name.

742 3d. If the jury believe from the evidence that Theodore H. Becker was president of the defendant in the years 1867, 1868, & 1869, and that while he was president he had the active charge or management of defendant's affairs, & while acting in that capacity he recognized George K. Sabin as superintendent or agent of defendant, then the jury may take such recognition *with* consideration in determining whether Sabin was the agent of defendant, or defendant had allowed him to assume that he was agent.

4th. If the defendant did disavow the acts of Sabin in borrowing the money from the plaintiff, it was incumbent on the defendant to notify the plaintiff of said disavowal, & it is necessary for the defendant the giving of such notice.

5th. The court instructs the jury that if they believe from the evidence that the defendant did notify Augustus Kountze that it repudiated the debt contracted by Sabin in its name, that such repu-

743 diation did not bind the plaintiff, unless they also find that said Augustus Kountze was an officer of plaintiff, or its agent to receive such notification.

To the giving of which said instructions, at the request of plaintiff, and to the giving of each & every of them, the defendant then & there excepted.

And the court, on its own motion, instructed the jury as follows:

1st. If Sabin obtained money in the name of defendant from plaintiff & had authority to that end, the transaction amounts to a loan to defendant, for which action may be maintained by plaintiff. Whether money was obtained from plaintiff in name of defendant, & the amount of it, is the first question to be determined; & if you find that money was so obtained, the question then to be considered is whether Sabin had authority to pledge the credit of defendant in that manner.

2nd. Upon the testimony in this case you may assume that,

744 prior to the 16th day of December, 1868, Sabin had no authority from defendant to borrow money in its name, for if he was agent of defendant during the years 1867 & 1868, as claimed by plaintiff, the borrowing of money was not within the powers conferred upon him; but if he obtained money in defendant's name & upon its credit, it was competent for the defendant to ratify the act & assume the indebtedness incurred in its name.

3d. The question of Sabin's agency in the years 1867 & 1868 is only important in connection with the question whether defendant ratified the dealings mentioned by witness as having occurred between Sabin & plaintiff; for less evidence of ratification by the principal is required to establish the fact in the case when an agency exist & the agent has exceeded his authority than is required in the case of an act done by one who had no authority whatever from the person whom he assumes to represent.

4th. If you find from the evidence that Sabin was the agent of
745 defendant during the years 1867 & 1868 to operate its mines in Gilpin County, & that he obtained money from plaintiff which was expended by him in the business of defendant, & that such money was demanded by plaintiff or its officers from the defendant, then you should consider whether the defendant, with knowledge of the fact, assented to such demand & approved the act of Sabin in obtaining the money. When an act has been done by an agent in excess of his authority, if the principal, upon being informed of all the facts, fail to disavow the agency within a reasonable time, his silence may be received as evidence of his assent to, and acquiessence in, the act done in his name.

5th. Therefore, if Sabin borrowed money from plaintiff in defendant's name, and the defendant was informed of such borrowing through its president, and of the manner in which the money was expended by him, and failed to disavow Sabin's agency within a reasonable
746 time after such notice, it is for you to say as matter of fact whether, by such failure to disavow the alleged agency, the defendant assented to the act of borrowing.

6th. If in your opinion the evidence discloses a promise by M'r Becker to pay any sum of money to plaintiff, the defendant is not bound by such promise. Evidence of interviews between officers of plaintiff & M'r Becker was received in order that you might determine whether a demand for money was made by plaintiff upon defendant, & whether M'r Becker was informed of the alleged dealings of Sabin with the plaintiff, & not for the purpose of showing any promise on the part of defendant.

7th. If you find for plaintiff you are at liberty to compute interest at the rate of ten per cent. per annum upon the amount due, from the 16th day of April, 1869, the date of the commencement of this suit, to the present time.

To the giving of each & every of said instructions by the court,
747 on its own motion, the defendant then and there excepted.

And therefore the said jury gave their verdict against the defendant as follows, to wit:

ROCKY MOUNTAIN NAT'L BANK OF CENTRAL City
vs.
UNION GOLD-MINING COMPANY.

We, the jury, find for the plaintiff the amount here attached, $30,358.32, thirty thousand three hundred & fifty-eight dollars and thirty-two cents. We figured the interest on $20,757.51 at 10 per cent. per annum.

A. ROONEY,
Foreman.

And thereupon the court said, with the consent of the jury, he named just the verdict, and no objection being made he did so.

Teller.

Whereupon the counsel for the defendant filed the following motion for a new trial:

748 TERRITORY OF COLORADO,
County of Jefferson, ss:

In district court of Jefferson County aforesaid, November term, A. D. 1873.

ROCKY MOUNTAIN NATIONAL BANK OF CENtral City
vs.
UNION GOLD MINING COMPANY OF COLORADO.

And now comes the said defendant, by its attorney, and moves the court to set aside the verdict of the jury herein, & to grant a new trial of this cause for the following reasons, to wit:

First. Because the court erred in admitting irrelevant, immaterial, & improper testimony offered by the plaintiff, and against the objection of defendant.

Second. Because the court erred in excluding relevant, material,
749 & proper testimony offered by defendant.

Third. Because the court erred in giving erroneous instructions to the jury offered and requested by plaintiff.

Fourth. Because the court erred in refusing to give to the jury proper & correct instructions asked for by defendant.

Fifth. Because the court erred in giving improper & erroneous instructions to the jury on its own motion.

Sixth. Because the verdict of the jury is contrary to the law of the case.

Seventh. Because the verdict of the jury is contrary to the evidence.

Eighth. Because the court erred in overruling the defendant's challenge to the juror Perrin, and allowing him to be empannelled as a juror to try the cause.

Ninth. Because the damages assessed by the jury are excessive.

750 Tenth. Because the proceedings are otherwise informal, uncertain, eroneous, and insufficient.

HUGH BUTLER,
G. B. REED,
Def't's Attorneys.

But the court overruled the said motion and gave judgment on the said verdict of the said jury against the defendant, to which the defendant then and there excepted; and inasmuch as the matters aforesaid do not appear of record, the counsel for the defendant presents this bill of exceptions, and prays that the same may be signed and sealed by the court and made part of the record in said cause, and it is accordingly done.

(Signed) MOSES HALLET, *Judge*, &c.

I have examined this bill of exceptions & I think it substantially correct, and I agree it may be signed & filed as correct.

H. M. TELLER,
Att'y for Plaintiff.

751 An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes. Passed February 17, 1848.

The people of the State of New York represented in senate and assembly do enact as follows:

SECTION 1. At any time hereafter any three or more persons who

may desire to form a company for the purpose of carrying on any kind of manufacturing, mining, mechanical, or chemical business, may make, sign, and acknowledge, before some officer, competent to take the acknowledgement of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on and a duplicate thereof in the office of the secretary of state, a certificate in writing, in which shall be stated the corporate name of the company and the objects for which the company shall be formed, the amount of the capital stock of the said company, the term of its existence not to exceed fifty years, the number of shares of which the said stock shall consist ; the number of trustees and their names who shall manage the
752 concerns of said company the first year, and the names of the town and county in which the operations of said company are to be carried on.

SECTION 2. When the certificate shall be filed as aforesaid the person who shall have signed and acknowledged the same and their successors shall be a body politic and corporate, in fact and in name, by the name stated in such certificate; and by that name have successors, and shall be capable of suing and being sued in any court of law or equity in this State, and they and their successors may have a common seal, and may make and alter the same at pleasure, and they shall by their corporate name be capable in law of purchasing, holding, and conveying any real and personal estate whatever which may necessary to enable the said company to carry on their operations named in such certificate, but shall not mortgage the same or give any lien thereon.

SECTION 3. The stock, property, and concerns of such company
753 shall be managed by not less than three nor more than nine trustees who shall respectively be stockholders in such company, and citizens of the United States, and a majority of whom shall be citizens of this State, who shall, except the first year, be annually elected by the stockholders at such time and place as shall be directed by the by-laws of the company, and public notice of the time and place of holding such election shall be published not less than ten days previous thereto in the newspaper printed nearest to the place where the operations of the said company shall be carried on; and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest number of votes shall be the trustees, and when any vacancy shall happen among the trustees by death, resignation, or otherwise, it shall be
754 filled for the remainder of the year in such manner as shall be provided for by the by-laws of the said company.

SECTION 4. In case it shall happen at any time that an election o trustees shall not be made on the day designated by the by-laws of the said company when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the said by-laws, and all acts of trustees shall be valid and binding as against such company until their successors shall be elected.

SECTION 5. There shall be a president of the company, who shall be designated from the numbers of the trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company by its by-laws may require.

755 SECTION 6. It shall be lawful for the trustees to call in and demand from the stockholders, respectively, all such sums of money by them subscribed, at such times and in such payments as installments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand, *as* notice requiring such payments shall have been pub'ished for six successive weeks in the newspaper nearest to the place where the business of the company shall be carried on as aforesaid.

SECTION 7. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this State, and prescribing the duties of officers, artificers, and servants that may be employed, for the ap-
756 pointment of all officers, and for carrying on all kinds of business within the objects and purposes of such company.

SECTION 8. The stock of such company shall be deemed personal estate, and shall be transferrable in such manner as shall be prescribed by the by-laws of the company, but no shares shall be transferrable until all previous calls thereon shall have been fully paid in *as* shall have been declared forfeited for the non payments of calls thereon; and it shall not be lawful for such company to use any of their funds in the purchase of any stock in any other corporation.

SECTION 9. The copy of any certificate of incorporation filed in pursuant of this act, certified by the county clerk, or his deputy, to be a true copy and of the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated.

757 SECTION 10. All the stockholders of every company incorporated under this act shall be severally individually liable to the creditors of the company in which they are stockholders, to an amount equal to the amount of stock held by them respectively, for all debts and contracts made by such company, until the whole amount of capital stock fixed and limited by such company shall have been paid in and a certificate thereof shall have been made and recorded, as prescribed in the following section, and the capital stock so fixed and limited shall all be paid in, one-half thereof within one year, and the other half thereof within two years from the incorporation of said company, or such corporation shall be dissolved.

SECTION 11. The president and a majority of the trustees, within thirty days after the payment of the last installment of the capital stock so fixed and limited by the company, shall make a certificate stating the amount of the capital stock so fixed and paid in, which
758 certificate shall be signed and sworn to by the president and a majority of the trustees, and they shall within the said thirty days record the same in the office of the county clerk of the county wherein the business of the said company is carried on.

SECTION 12. Every such company shall annually, within twenty days from the first day of January, make a report, which shall be published in the town, city, or village, or, if there be no newspaper published in said town, city, or village, then in some newspaper published nearest the place where the business of said company is carried on, which shall state the amount of capital and of the proportion actually paid in, and the amount of its existing debts, which report shall be signed by the president and a majority of the trustees, and shall be verified by the oath of the president or secretary of said company, and filed in the office

of the clerk of the county where the business of the company
759 shall be carried on, and if any of said companies shall fail so to do all of the trustees of the company shall be jointly and severally liable for all the debts of the company then existing, and for all that shall be contracted before such report shall be made.

SECTION 13. If the trustees of any such company shall declare and pay any dividend when the company is insolvent, or any dividend, the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of the company then existing, and for all that shall *be* thereafter be contracted while they shall respectively remain in office: Provided, That if any of the trustees shall object to the declaring of such dividend or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of their objection in writing with the clerk of the county, they shall be exempt from such liability.

760 SECTION 14. Nothing but money shall be considered as payment of any part of the capital stock, and no loan of money shall be made by any such company to any stockholder therein; and if any such loan shall be made to a stockholder the officer who shall make it such loan and interest, for all the debts of *the debts of* the company consor assent thereto, shall be jointly and severally liable to the extent of tracted before the re-payment of the sum loaned.

SECTION 15. If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of this act, shall be false in any material representation, all the officers who shall have signed the same, knowing to be false, shall be jointly and severally liable for all the debts of the company contracted while they are stockholders or officers thereof.

SECTION 16. No person holding stock in any such company as executors, administrators, guardian, or trustee, and no person holding
761 such stock as collateral security, shall be personally subject to any liability as stockholder of such company, but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estates and funds in the hands of such executors, administrators, guardian, or trustee, shall be liable, in like manner, and to the same extent, as the testate *as* intestate *as* the word of persons interested in such trust fund would have been if he had been living and competent to act and held the same stock in his own name.

SECTION 17. Every such executor, administrator, guardian, or trustee, shall represent the share of stock in his hands at all the meetings of the company, and may vote accordingly as a stockholder, and every such person who shall pledge his stock as aforesaid, may nevertheless represent the same at all such meetings and may vote accordingly as a stockholder.

SECTION 18. The stockholders of any company organized under
762 the provisions of this act, shall be jointly and severally individually liable for all the debts that may be due and owing to all their laborers, servants, and apprentices, for services performed for such corporation.

SECTION 19. The legislature may at any time, alter, amend, or repeal this act, or may amend or repeal any incorporation formed or created under this act, but such amendment or *ap*peal shall not nor shall the dissolution of any such company take away or impair any remedy given

against any such corporation, its stockholders or officers, for any liability which may have been previously incurred.

SECTION 20. Any company or corporation heretofore formed either by special act or under the general law, and now existing for any manufacturing, mining, mechanical, or chemical purpose, or any company which may be formed under this act, may increase or diminish its
763 capital stock by complying with the provisions of this act, to any amount which may be deemed sufficient and proper for the purpose of the corporation, and may also extend its business to any other manufacturing, mining, mechanical, or chemical business, subject to the provisions and liabilities of this act. But before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the amount of capital to which it is proposed to be reduced, such amount of debts and liabilities shall be satisfied and reduced so as not to exceed such diminished amount of capital: and any existing company heretofore formed under the general law, or any special act, may come under and avail itself of the privileges and provisions of this act by complying with the following provisions, and thereupon such company, its officers and stockholders, shall be subject to all the restrictions, duties, and liabilities of this act.

764 SECTION 21. Whenever any company shall desire to call a meeting of the stockholders for the purpose of availing itself of the privileges and provisions of this act, or increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the trustees to publish a notice signed by at least a majority of them, in the newspaper in the county, if any shall be published therein, at least three successive weeks, and to deposit a written or printed copy thereof in the post-office, addressed to each stockholder, at his usual place of residence, at least three weeks previous to the day fixed upon for holding such meeting; specifying the object of the meeting, the time and place, when and where such meeting shall be held, and the amount to which it shall be proposed to increase or diminish the capital, and the business to which the company would be extended or changed, and a vote of at least two-thirds
765 of all the shares of stock shall be necessary to increase or diminishment of its capital stock, or the extension or change of its business as aforesaid, or for a company to avail itself of the provisions of this act.

SECTION 22. If at any time and place specified in the notice provided for in the preceding section of this act stockholders shall appear in person or by proxy in number representing not less than two-thirds of all the shares of stock of the corporation, they shall organize by choosing one of the trustees chairman of the meeting and also a suitable person for secretary, and proceed to a vote of those present, in person or by proxy: and if, on canvassing the votes, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital or of extending or changing its business as aforesaid, or for availing itself of the privileges and provisions of this act, a certificate of the proceedings showing a compliance with the provisions of this act, the amount of capital actually paid in, the business to
766 which it is extended or changed, the whole amount of debts and liabilities of the company, and the amount to which the capital stock shall be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman, and be countersigned by the secretary, and such certificate shall be acknowledged by the chairman and filed as required by the first section of this act; and, when so filed,

the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the company shall be entitled to the privileges and provisions and be subject to the liabilities of this act, as the case may be.

SECTION 23. If the indebtedness of any such company shall at any time exceed the amount of its capital stock, the trustees of such company assenting thereto shall be personally and individually liable for such excess to the creditors of such company.

767 SECTION 24. No stockholder shall be personally liable for the payment of any debt contracted by any company formed under this act which is not to be paid within one year from the time the debt is contracted nor unless a suit for the collection of such debt shall be brought against such company within one year after the debt shall become due, and no suit shall be brought against any stockholder who shall cease to be a stockholder in any such company for any debt so contracted unless the same shall be commenced within two years from the time he shall have ceased to be a stockholder in such company, nor until an execution against the company shall have been returned unsatisfied in whole or in part.

SECTION 25. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof containing the names of all persons, alphabetically arranged, who are or shall within six years have been stockholders of such
768 company, and showing their place of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the amount of stock actually paid in, which book shall, during the usual business hours of the day, on every day except Sunday and the fourth day of July, be open for the inspection of stockholders and creditors of the company and their personal representatives at the office or principal place of business of such company in the county where its business operations shall be located, and any and every such stockholder, creditor, or representative shall have a right to make extracts from such book; and no transfer of stock shall be valid for any purpose whatever except to render the person to whom it shall be transferred liable for the debts of the company, according to the provisions of this act, until it shall have been entered therein, as required by this section, by an entry showing to and from whom transferred. Such book shall be presumptive
769 evidence of the facts therein stated in favor of the plaintiff in any suit or proceedings against such company or against any one or more stockholders. Every officer or agent of any such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same or allow the same to be inspected and extracts to be taken therefrom as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people, by the district attorney of the county in which the business of such corporation shall be located, and, when so recovered, the amount shall be paid into the treasury of such county for the use thereof.

SECTION 26. Every corporation created under this act shall
770 possess the general powers and privileges and be subject to the

liabilities and restrictions contained in title third of chapter eighteen of the first part of the Revised Statutes.

SECTION 27. This act shall take effect immediately.

CHAP. 333.—An act to amend an act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes, passed February seventeenth, eighteen hundred and forty-eight. Passed June 7th, 1853.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any certificate hereafter filed under the provisions of the above-entitled act may designate one or more places where the company may carry on their business.

SECTION 2. The trustees of such company may purchase mines,
771 manufactories, and other property necessary for their business, and issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be declared and taken to be full stock, and not liable to any further calls, neither shall the holders thereof be liable for any further payments under the provisions of the tenth section of the said act; but in all statements and reports of the company to be published, this stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the fact.

SECTION 3. This act shall take effect immediately.

CHAP. 210.—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight. Passed April 13th, 1854.

772 The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section twenty-seven of chapter forty of the laws of eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," shall read as follows: Whenever any person or persons, owning fifteen per cent. of the capital stock of any company formed under the provisions of this act, shall present a written request to the treasurer thereof that the desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the person who presented the said written request to said treasurer within twenty days after such presentation, and shall also at the same time place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during
773 business hours be exhibited to any stockholder of said company demanding an examination thereof. Such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this act, he shall forfeit and pay to the person presenting said written request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

SECTION 2. This act shall take effect immediately.

CHAP. 29.—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight. Passed February 16th, 1857.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. No incorporated company organized or hereafter to be organized for the manufacturing of salt under the "act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, one thousand eight hundred and forty-eight, shall be deemed dissolved or shall be dissolved on account of the capital stock of such company not being paid in, the one half within one year and the other half within two years from the incorporation of such company: Provided, That such stock shall be paid in within four years from the organization of such company.

SECTION 2. Whenever any company formed under said act shall have fixed the duration of its corporate existence for a less period than it was privileged to do by the first section of said act, it may by a vote of the stockholders representing a majority of the stock and upon executing and acknowledging a new or amended certificate under its corporate seal, signed by the president and two-thirds of its directors, and filing the same in the county where its business shall be carried on, and in the office of the secretary of state, extend the term of its corporate existence to a period not longer than it could have originally fixed the same, and shall thereupon possess all the powers and privileges and be subject to all the liabilities mentioned in said act during such extension of its existence.

SECTION 3. If any company shall be formed under said act for the purpose of carrying on any part of its business in any place out of this State, the said certificate shall so state, and shall also state the name of the town and county in which the principal part of the business of said company within this State is to be transacted, and said town and county shall be deemed the town, place, and county in which the operations and business of the company are to be carried on and its principal place of business, within the meaning of the provisions of this act.

SECTION 4. This act shall take effect immediately.

CHAP. 269.—An act to amend the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes," passed February seventeenth, eighteen hundred and forty-eight. Passed April 12th, 1860.

The people of the State of New York, represented in the senate and assembly, do enact as follows:

SECTION 1. The act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, is hereby amended so as to allow corporations to be hereafter organized under said act with not less than three nor more than thirteen trustees, instead of being limited to nine in number, as provided in said act.

SECTION 2. The number of trustees in any corporation heretofore organized under the said act may be increased to not more than thirteen, as follows: The existing trustees of any such corporation, or a majority thereof, shall make and sign a certificate declaring how many trustees the

corporation shall have in the future management of its business, and stating the names of the new or additional trustees, which certificate shall be acknowledged or proved by a subscribing witness, and shall be filed in the office of the secretary of state, and in the clerk's office of the county where the original certificate of incorporation was filed, and from and after the filing of such certificate the trustees of such corporation shall be deemed increased to the number therein stated, and the persons so named shall be trustees until a new election of trustees shall be had according to said act and the by-laws or regulations of such corporations.

SECTION 3. This act shall take effect immediately.

CHAP. 170.—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight. Passed April 12, 1861.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section twenty-six of the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, is hereby amended so as to read as follows: Every corporation created under this act shall possess the general powers and privileges, and be subject to the liabilities and restrictions contained in title third, chapter eighteen, of the first part of the revised statutes, and the provisions of section six, article first, title two, chapter thirteen of the first part of the revised statutes shall apply to every such corporation.

SECTION 2. No company organized under the provisions of said act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes shall be deemed or taken to have a principal office or place for transacting its financial concerns other than that at which the operations of the company is carried on, unless within the month of May in each year the president and treasurer, or a majority of the trustees, shall make a duplicate certificate, stating the amount of the then capital of said company, and the portion of such capital not invested in real estate, and stating that such company then has a principal office for transacting its financial concerns in a county other than that in which the operations of said company are carried on, stating the town or city and county in which such financial office is located, and that the president and treasurer and a majority of the trustees of said company are then actually residents of the town or city in which such financial office is located, which duplicate certificates shall be signed and sworn to by the persons making the same, and filed, the one in the clerk's office of the county where the operations of said company are carried on, and the other in the clerk's office of the county in which such financial office shall be, and in case in any year such duplicate certificate shall be made and filed as aforesaid, then, during the year succeeding the first day of June next after filing such certificates, the personal estate of such company shall be assessed only in the town or ward named in said certificate as that in which such financial office is located.

SECTION 3. This act shall take effect immediately.

781 CHAP. 472.—An act to amend an act entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes,'" passed April thirteenth, eighteen hundred and fifty-four. Passed April 23, 1862.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section one of the act entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, and chemical purposes,'" passed April thirteenth, eighteen hundred and fifty four, is hereby amended so as to read as follows:

Whenever any person or persons owning five per cent. of the capital stock of any company, exceeding one hundred thousand dollars, formed under the provisions of this act, shall present a written request
782 to the treasurer thereof that they desire a statement of the affairs of such company, it shall be the duty of such treasurer to make a statement of the affairs of said company, under oath, embracing a particular account of all its assets and liabilities in minute detail, and to deliver such statement to the person who presented the said written request to said treasurer within twenty days after such presentation, and shall also, at the same time, place and keep on file in his office, for six months thereafter, a copy of such statement, which shall, at all times during business hours, be exhibited to any stockholder of said company demanding an examination thereof. Such treasurer, however, shall not be required to deliver such statement in the manner aforesaid oftener than once in six months. If such treasurer shall neglect or refuse to comply with any of the provisions of this act he shall forfeit and pay to the person presenting said written request the sum of fifty dollars,
783 and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in any court having cognizance thereof.

SECTION 2. Should not any such written statement as is required by section one of this act be demanded during the year preceeding the annual meeting of the stockholders of any company formed under the provisions of this act for the election of directors or trustees, it shall be the duty of the treasurer of every such company to prepare and exhibit to the stockholders then and there assembled a general statement of the assets and liabilities of such company.

SECTION 3. This act shall take effect immediately.

CHAP. 517.—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight. Passed May 2, 1864.

784 The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any company formed under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, may change its place or places of business by a vote of the stockholders representing two-thirds of the stock, at any meeting of the stockholders regularly called, and executing an amended certificate specifying the names of the towns or cities from and to which

the business location of the company is to be changed, and in other respects conforming to the original certificate, which amended certificate shall be signed by the president and two-thirds of the directors of the company, and shall be filed in the office of the secretary of state and in the office of the clerk of the county where the business operations
785 of the company are to be carried on, and published weekly in two papers in the towns or cities from and to which the business operations have been removed and are to be carried on for the term of three months. But the property of said company shall be liable to taxation in any county where such property may be, or in which its business may be done, to the extent of its property in any such county.

SECTION 2. Any corporation formed under the said act, passed February seventeen, eighteen hundred and forty-eight, or of the acts amending or extending the said act, may secure the payment of any debt heretofore contracted or which may be contracted by it in the business for which it was incorporated, by mortgaging all or any part of the real estate of such corporation, and every mortgage so made shall be as valid to all intents and purposes as if executed by an individual owning such real estate: Provided, That the written assent of the stockholders, owning at least two-thirds of the capital stock of such corporation, shall
786 first be filed in the office of the clerk of the county where the mortgaged property is situated.

SECTION 3. This act shall take effect immediately.

CHAP. 234.—An act to authorize the formation of corporations for agricultural purposes. Passed March 29, 1865.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeen, eighteen hundred forty-eight, for the purpose of propagating, cultivating, and developing the different varieties of the grape, and the manufacture of wines and brandies therefrom; and cul-
787 tivating sugar-cane, cotton, rice, tobacco, indigo, and other products of the earth, for preparing the same for market, and for transporting and disposing of the same. Every corporation so formed shall be subject to all the provisions and obligations contained in the aforesaid act, and the several acts amendatory of the same, so far as they are or may be applicable, and shall be entitled to all the benefits and privileges conferred by said act and amendatory acts, except that such corporation shall not be confined in their operations to the counties in which their certificate shall be filed.

SECTION 2. This act shall take effect immediately.

CHAP. 307.—An act to extend the operation and effect of the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes." Passed April 6th, 1865.

788 The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any three or more persons may organize and form them-

selves into a corporation in the manner specified and required by the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeen, eighteen hundred and forty-eight, for the purpose of buying and selling and transporting coal and peat of all kinds.

SECTION 2. Every corporation so formed shall be subject to all the provisions, duties, and obligations contained in the above-mentioned act and amendments thereto, and shall be entitled to all the benefits and privileges thereby conferred, except that such corporation shall not be confined in their operations to the county in which their certificate shall be filed.

SECTION 3. This act shall take effect immediately.

789 CHAP. 73.—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeen, eighteen hundred and forty-eight. Passed February 21, 1866.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any company formed under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeen, eighteen hundred and forty-eight, may increase the number of shares of which its capital stock consists: Provided the capital stock of such company shall not thereby be increased or diminished.

SECTION 2. Such increase shall be made by a vote of the stockholders in favor thereof, representing two-thirds of the capital stock, at
790 any meeting of the stockholders called in the manner prescribed in the act hereby amended, and by executing and acknowledging an amended certificate specifying the number of shares of which the said capital stock of said company shall thereafter consist, and the par value of each share, and in other respects conforming to the original certificate, which amended certificate shall be signed by the president and two-thirds of the directors of the company, and shall be filed in the office of the secretary of state, and in the clerk's office of the county where the original certificate was filed.

SECTION 3. Each stockholder shall be entitled to a certificate for such a number of shares of said capital stock after the whole number has been increased as aforesaid as shall at their par value be equal to the par value of the shares theretofore held by him in such company on surrendering the certificate for said shares so held by him to
781 *b* be cancelled: Provided, That such increase shall not so divide the shares as to give the fractional part of a share to any stockholder.

SECTION 4. This act shall take effect immediately.

CHAP. 371.—An act to extend the operation and effect of the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes." Passed April 4th, 1866.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any three or more persons may organize and form themselves into a corporation in the manner specified and required in and by the act entitled "An act to authorize the formation of corporations

for manufacturing, mining, mechanical, or chemical purposes,"
782 *b* passed February seventeen, eighteen hundred and forty-eight, for the purpose of accumulating, stating, conducting, furnishing, and supplying water for mining purposes, and may acquire, take, hold, lease, and convey lands and water-power suitable for those purposes.

SECTION 2. Every corporation so formed and the stockholders thereof shall be subject to all the provisions, duties, and obligations contained in the above-mentioned act, and shall be entitled to all the benefits, privileges thereby conferred, except that such corporations shall not be confined in their operations to the county in which their certificate shall be filed.

SECTION 3. It shall and may be lawful for any corporation heretofore incorporated for mining purposes, under the act mentioned in the first section, to conduct the business for which the formation of corpo-
783 *b* rations is authorized by said first section: Provided the intention so to do shall be specified among the objects for which such corporation is formed in its certificate of incorporation.

SECTION 4. This act shall take effect immediately.

CHAP. 799.—An act to amend the act passed February seventeen, eighteen hundred and forty-eight, entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes." Passed April 25th, 1866.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The first section of the "act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-
784 *b* eight, is hereby amended by inserting after the words "any kind of manufacturing, mining, mechanical, or chemical business," the words, "or the business of building and keeping a hotel, or for building and maintaining museums, or for curative purposes."

SECTION 2. The title of said act is hereby amended by inserting after the words "or chemical" the words "or other."

SECTION 3. This act shall take effect immediately.

CHAP. 838.—An act to amend an act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight. Passed April 28, 1866.

The people of the State of New York, represented in senate and assembly, do enact as follows:

785 *b* SECTION 1. The title of the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, is hereby amended so as to read as follows: "An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical, or curative, mercantile, or commercial purposes."

SECTION 2. At any time hereafter three or more persons may form a corporation for the purpose of carrying on any kind of manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical, or curative business; may make, sign, and acknowledge before some officer competent to take acknowledgments of deeds, and file the same in the

office of the clerk of the county in which the business of the company shall be carried on, and a duplicate in the office of the secretary
786 *b* of state, a certificate in writing, in which shall be stated the corporate name of said company and the objects for which it shall be formed, the amount of its capital stock, the number of shares of which said stock shall consist, the term of its existence, not exceeding fifty years, the number of its trustees, and the names of those who shall manage the concerns of the company for the first year, and the names of the town or city and county in which the operations of said company shall be carried on.

SECTION 3. It shall be lawful for any manufacturing company heretofore or hereafter organized under the provisions of this act, or the act hereby amended, to hold stock in the capital of any corporation engaged in the business of mining, manufacturing, or transporting such materials as are required in the prosecution of the business of such company, so long as they shall furnish or transport such materials for the use
787 *b* of such company, and for two years thereafter, and no longer, and the trustees of such company shall have the same power with the respect to the purchase of such stock and issuing stock therefor as are now given by law with respect to the purchase of mines and manufacturers, and other property necessary to the business of manufacturing companies. But the capital stock of such company shall not be increased without the consent of the owners of two-thirds of the stock, to be obtained as provided by sections twenty-one and twenty-two of the act hereby amended.

SECTION 4. When any such manufacturing company shall be a stockholder in any other corporation, its president or other officer shall be eligible to the office of trustee of such corporation, the same as if they was individually stockholders therein.

SECTION 4. This act shall take effect immediately.

788 *b* CHAP. 12.—An act to amend the act passed February sixteenth, eighteen hundred and fifty-seven, entitled "An act to amend an act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes,'" passed February seventeenth, eighteen hundred and forty-eight, is hereby amended so as to read as follows:

SECTION 2. Whenever any company formed under said act shall have fixed the duration of its corporal existence for a less period than it was privileged to do by the first section of said act, it may, by a vote of the stockholders representing a majority of the stock, and upon executing and acknowledging a new or amended certificate under its corporate seal, signed by the president and two-thirds of the directors or trustees, and filing the same in the county where its business shall be carried on and in the office of the secretary of state, extend the term of its cor-
789 *b* porate existence from time to time to a period not longer in the aggregate than it could have originally fixed the same, and shall thereupon possess all the powers and privileges and be subject to all the liabilities mentioned in said act during such extension of its existence.

SECTION 2. This act shall take effect immediately.

CHAP. 248.—An act to amend the act passed April eleventh, eighteen hundred and sixty, chapter two hundred and sixty-nine, entitled "An act to amend the act entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes,'" passed February seventeenth, eighteen hundred and forty-eight. Passed April 3, 1867.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The first section of the "act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes," passed February seventeenth, eighteen hundred and forty-eight, is hereby amended by inserting after the words "any kind of manufacturing, mining, mechanical, and chemical purposes" the words "or the business of quarrying stone."

SECTION 2. The second section of said act is hereby amended so as to read as follows: The number of trustees in any corporation organized before or since the eleventh day of April, eighteen hundred and sixty, or which shall hereafter be organized under the said act, may be increased to not more than thirteen, as follows: The existing trustees of any such corporation, or a majority of them, shall make and sign a certificate declaring how many trustees the corporation shall have in the future management of its business, and stating the names of the new additional trustees, which certificate shall be acknowledged by the trustees signing the same or proved by a subscribing witness, and shall be filed in the office of the clerk of the county where the original certificate of incorporation was filed, and a duplicate or transcript thereof, duly certified under the official seal of such clerk, filed in the office of the secretary of state, and from and after the filing of such certificate and duplicate or transcript the trustees of said corporation shall be deemed increased to the number therein stated, and the persons so named therein shall be trustees until a new election of trustees shall be had according to the said act and the by-laws or regulations of such corporation.

SECTION 3. This act shall take effect immediately.

CHAP. 937.—An act to enable companies or corporations organized under any general law to extend the term of their existence. Passed May 17, 1867.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Any company or corporation heretofore formed under any general law of this State, at any time within three years of the expiration of its term of existence, may extend the term of existence of such company or corporation beyond the time mentioned in the original articles of association or certificate of incorporation, by the consent of the stockholders owning two-thirds in amount of the capital stock of such company or corporation in and by a certificate to be signed by such stockholders, and acknowledged or proved, so as to enable them to be recorded, which certificate shall be filed in the office of the secretary of state, and in the office of the clerk of the county in which its original certificate or articles of association, if any, are filed or recorded, and the said secretary of state and the clerk of such county shall, upon such filing, record the same in the books kept in their respective offices for the record of articles of association in such book, and thereupon the time of existence of such company shall be ex-

tended, as designated in such certificate, for a term not exceeding the term for which said company or corporation was organized in the first instance.

SEC. 2. This act shall take effect immediately.

STATE OF NEW YORK,
Office of the Secretary of State.

It is hereby certified that I have compared the preceeding copies of laws, (chap. 40, laws of 1848,) being an act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes, chap. 333, laws of 1853; chap. 201, laws of 1854; chap. 29, laws of 1857; chap. 269, laws of 1860; chap. 170, laws of 1861; chap. 472, laws of 1862; chap. 517, laws of 1864; chap. 234 and 307, laws of 1865; and chap's 73, 371, 799, & 838, laws of 1866; and chap's
794 12 & 248, laws of 1867, (being severally acts amendatory of chap. 40, laws of 1848,) and chap. 937, laws of 1867, with the original laws on file in this office, and do hereby certify that the same are correct transcripts therefrom, and of the whole of said original laws.

Witness my hand and the great seal of the State of New York, at the city of Albany, this 8th day of June, in the year of our Lord one thousand eight hundred & sixty-seven.

[GREAT SEAL.] FRANCIS C. BARLOW,
Secretary of State.

Bill of exceptions.

ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY,
vs.
UNION GOLD-MINING COMPANY OF COLORADO.

Filed January 20th, 1874.

JOHN R. CLEAVELAND, *Clerk*,
By HENRY BELL, *Deputy*.

795 TERRITORY OF COLORADO,
County of Jefferson, ss:

I, John R. Cleaveland, clerk of the district court of the second judicial district of Colorado Territory, in and for the county of Jefferson, by Henry Bell, deputy, do hereby certify that the foregoing *is a* true and complete copies from record of affidavit, bonds, attachment, declaration, demur's, motions, and pleadings of both parties, respectively, and proceedings that were had in the courts held at Gilpin and Boulder Counties, in said second judicial district, taken from certified transcript of record now on file in my office, and all the proceedings that were had in the district court of the aforesaid second judicial district and county of Jefferson, held at Golden, at the last November term, A. D. 1873, in a case lately pending, wherein The Rocky Mountain National Bank of Central City, Colorado, were plaintiff, and The Union Gold-Mining Company of Colorado were defendant.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this sixth day of February, A. D. 1874.

DISTRICT COURT SEAL, JEFFERSON CO. JOHN R. CLEAVELAND, *Clerk*.
By HENRY BELL, *Deputy*.

796 In district court, November, A. D. 1873.

TERRITORY OF COLORADO,
Jefferson County, ss :

IN THE MATTER OF ROCKY MOUNTAIN National Bank of Central City, Colorado,
vs.
UNION GOLD-MINING COMPANY OF COLORADO. } Attachment; venue from Gilpin County.

Plaintiff's fees.

Clerk's fees :

Ent. app., '25 : ent. app. attorney, 75 : call. & swear. jury, 50	1 50	
2 copies jury, 60 : filing 30 papers, 4.50 ; iss. 5 subpenas, 3.75	8 85	
Swear. 12 witnesses, 1.80 ; swear. baiiiff, 75 ; ent. suit docket, 1.25	3 80	
Ent. on , 75 ; ent. final jug't, 75 ; or. in emp. jury, 75 ; sw'g jur., 75	3 00	
Special venue, 75 ; doc't judg't, 25 ; cert'd copy letters, 1.00	2 00	
Pol'ing jury, 75 ; 4 aff. wit., 1.40 ; ent. suit doc't, 58, poll. up c't	7 15	
Cert'f'd copy jug. & c'sts, 1.00 ; fee record, 1 ; fee record, 1 ; jury fee, 58	8 00	
Open deposition, 25	25	
		34 55
J. R. Cleavland, clerk's fees taking deposition, G. K. Sabin		58 50

Defendant's costs and fees.

Clerk's fees :

Ent. app., 25 : ent. app. att'y, 75 : 2 copies jury, 60	1 60	
Filing 20 papers, 3.00 ; ent. verdict docket, 1.00 ; poll. jury, 75	4 75	
Order appeal, 75 ; issue 2 subpenas, 1.50 ; swear. 13 witness, 1.95	4 20	
Fee recor., 1.00 ; fee bill, 1.00 ; filing appeal bond, 1.00	3 00	
		13 55
Sheriff' fees, serv'g 4 subpœnas		8 90

Witness' plaintiff fees :

797

C. C. Welsh, 1 day, 2.50 ; C. B. Kountze, 5 days & mil., 15.90	18 40	
W. H. Tappan, 6 days & mil., 17.50 ; J. O. Reynolds, 6 day' & mil., 17.50	35 00	
Jno. Meller, 1 day & mil., 2.70 ; Jno. M. Parker, 1 day & mil., 2.70	5 40	
		58 80

Sheriff fees on part defendant :

Serving subpenas on J. F. Topping & Hense	3 40	3 40
		$177 70

I hereby certify the foregoing to be a true copy from my fee-book of the above case and the items of costs herein.

HENRY BELL,
Deputy Clerk.

Transcript fees: 1553.31 folio' @ 20, $310.66; appeal bond, 2.00; certificate, 1.00—$313.66; paid by T. H. Becker, esq.

(Endorsed:) G. D. No. 134. Term No. 20. Union Gold-Mining Company, appellant, vs. Rocky Mountain National Bank, appellee. Filed February 11th, 1874. John W. Webster, clerk.

798 And afterwards, on, to wit, the same 11th day February, A. D. 1874, there was filed in the office of the clerk of the supreme court of the Territory of Colorado the assignment of errors in the above-entitled cause, which is in words and figures as follows, to wit:

In the supreme court, February term, 1874.

TERRITORY OF COLORADO:

THE UNION GOLD MINING COMPANY OF COLORADO, appellant,
vs.
THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, appellee.

Assignment of errors.

The court below, from which this cause was removed, erred in the proceedings, hearing, and trial of this cause, as hereinafter set forth, to wit:

1st. In sustaining demurrer of plaintiffs to defendant's special pleas, that is to say, the 2d, 3d, 4th, 5th, & 6th pleas pleaded by the defendant.

799 2d. In denying the motion of defendant and refusing to suppress each and every of the questions and answers in the deposition of George K. Sabin, embraced in the motion of the defendant.

3d. In sustaining the motion of plaintiff's counsel and suppressing certain questions and answers of the witness Sabin in his deposition on the cross-examination of witness Sabin by defendant's counsel.

4th. In overruling the challenge for cause of the defendant's counsel to the juror Nutt, and deciding him to be a competent juror.

5th. In overruling the challenge for cause of defendant's counsel to the juror W. Parrin, and holding him competent to try and allowing him to sit as a juror in the trial of this case.

6th. In overruling defendant's objection and allowing witness Goodspeed to testify to the contents of receipts taken by Sabin.

800 7th. In overruling the objections of defendant's counsel and allowing witnesses Goodspeed, Potter, & C. B. Kountze to testify as to conversations had by them respectively with T. H. Becker, concerning the alleged indebtedness, and allowing the admissions, statements, & promises of Becker, as testified to by said witnesses, to go to the jury as evidence for the plaintiff and against the defendant.

8th. In overruling defendant's motion to strike out certain statements of witness Goodspeed in regard to statements made by Becker in regard to other debts contracted in name of defendant.

9th. In overruling the objection of defendant and allowing witness Goodspeed to testify in regard to conversations had between himself & Becker relative to other debts than the one in controversy.

10th. In overruling objection of defendant and allowing witness

801 Goodspeed to testify in regard to the payment by Becker of other and different debts contracted by Sabin.

11th. In overruling the defendant's objection and allowing witness Goodspeed to testify to a communication or settlement had between Sabin & Becker on the 19th day of March, 1869.

12th. In overruling objections of defendant's counsel and allowing the witnesses Goodspeed, Potter, Tappan, Raynolds, & Roworth to testify in regard to dealing in purchase of mining supplies, &c., by Sabin in the name of the defendant with other parties than plaintiff.

13th. In overruling defendant's objection and allowing witness Goodspeed to testify to whom goods sold Sabin by other parties were charged.

14th. In overruling defendant's objection and allowing witness Goodspeed to answer the question asked by plaintiff's counsel, "Did M'r Sabin ever at any time notify you that he had no authority to
802 make debts in the name of defendant?"

15th. In overruling defendant's objection and allowing the witness Goodspeed to testify from the books of defendant how they had been kept by other clerks than himself; and contents of the books of &c.

16th. In overruling the objection of the defendant & allowing the witness Goodspeed to testify from the books their contents, and as to dealings between Sabin & one Rank thus appearing in the books of account.

17th. In sustaining plaintiff's objection and refusing to allow witness Goodspeed on cross-examination to testify as to what property other than that of the defendant he knew Sabin to be mining in the summer of 1868, and the allowing plaintiff's counsel on redirect examination to examine on same point.

18th. In overruling objection of defendant and allowing books
803 kept by plaintiff's cashier for Sabin to go to the jury as evidence against the defendant.

19th. In overruling objection of defendant, and allowing witness Potter to answer the following question, asked by plaintiff's counsel: "Do you know what business the defendant was engaged in in the summer of 1867?"

20th. In overruling the objection of the defendant and allowing the witness Potter to answer the following question, asked by plaintiff's counsel: "Who was the agent or superintendent of defendant in the summer of 1867, when you first knew it, in charge of the works, if you knew?"

21st. In overruling the objection of the defendant and allowing the witness Potter to answer the following question, asked by plaintiff's counsel: "Did the defendant do any business with the plaintiff after your acquaintance with the parties? If so, state the nature of the business & how it was transacted."

804 22nd. In overruling the objection of the defendant and allowing the witness Potter to testify as to what Sabin was doing in the summer of 1867.

23d. In overruling defendant's objections and allowing the witness Potter to testify and answer the following question, asked by plaintiff's counsel: "Did you ever have any subsequent conversation with M'r Becker concerning this indebtedness; if so, when & what was it?"

24th. In overruling defendant's objection & allowing witness Potter to testify in regard to settlement had between Becker & Sabin.

25th. In overruling objection of defendant and allowing witness Potter to testify in regard to what was said in settlement between Becker & Sabin.

26th. In overruling objection of defendant and allowing witness Potter to state what Becker said about other debts contracted by
805 Sabin other than the one in controversy, & in regard to Becker's having drawn drafts, &c., to pay such debts.

27th. In sustaining the objection of plaintiff's counsel & refusing to allow counsel of defendant to prove by witness Potter that plaintiff knew, where furnishing the money in controversy to Sabin, that Sabin was not expending the same in the business of defendant but for his own use.

28th. In overruling defendant's objection & allowing witness Potter, on redirect examination, to answer the following question asked by plaintiff's counsel: "How was this account treated, in all the dealings with Becker & conversations with Becker?"

29th. In overruling defendant's objection and allowing witness Potter, on redirect examination, to answer the following question asked by plaintiff's counsel: "State what the arrangement with Sabin was; whether it was to keep the fact from Becker that there was an
806 overdraft, or simply not to call on him for those drafts until the 10th of December." Also, in overruling the objection of defendant and allowing the witness Potter, after he had fully answered the question propounded, to go on & state what "we supposed."

30th. In overruling defendant's objections & allowing the letter of Becker to president of plaintiff, dated January 1st, 1869, to be read to the jury as evidence against the defendants.

31st. In overruling defendant's objection and allowing witness Tappan to testify how checks were signed that he received from Sabin in payment for goods.

32nd. In overruling defendant's objection and allowing the witness Tappan to testify as to contents of receipts, &c., given by him to Sabin.

33d. In sustaining plaintiff's objection and refusing to allow the
807 witness Tappan, on cross examination, to answer the following question asked by defendant's counsel: "Do you not know that in May or June, 1869, at the time you testified to, M'r Sabin was running a mine at Nevada?"

34th. In overruling defendant's objection, and allowing the witness Raynolds to testify what business defendant was doing in the year 1865.

35th. In overruling defendant's objection, and allowing the witness Raynolds to testify as to who was superintendent or agent of defendant in 1866 & 1867.

36th. In overruling defendant's objection, and allowing witness Raynolds, on redirect examination, to testify in regard to checks drawn by Sabin & received by him (witness) in their dealings.

37th. In overruling objections of defendant's counsel, and allowing the witnesses Tappan, Raynolds, & Roworth to testify as to the
808 dealings of the witness Sabin with each of them in the purchase & sale of mining supplies, in whose name bought, how paid for, &c.

38th. In overruling defendant's objection, and allowing witness Roworth to testify in regard to checks made by Sabin to witness in payment for mining supplies.

39th. In overruling defendant's objection, and allowing counsel for plaintiff to read certain portions of depositions of Augustus Kountze.

40th. In sustaining plaintiff's objection, and refusing to allow the witness John Mellor to testify for whom he was working from November or December, 1866, under the contract made with Sabin at that date; also in sustaining plaintiff's objection and refusing to allow the witness

Mellor to answer the following question asked by defendant's counsel: "For whom did he (Sabin) employ you to work?"

809 41st. In overruling defendant's objection and allowing witness Mellor, on cross-examination, as to receipts given Sabin by himself.

42nd. In overruling defendant's objection and allowing witness Thomas Thompson to testify, on cross-examination, as to checks received by witness from Sabin's employ. Also in overruling defendant's objection and allowing witness Thompson on cross-examination to be examined & testify in regard to receipts given by witness to Sabin.

43d. In sustaining objections of plaintiff & refusing to allow the defendant to read in evidence to the jury the certificate of incorporation of the defendant.

44th. In sustaining plaintiff's objection & refusing to allow witness Becker to testify to the duties of the finance committee in defendant corporation.

45th. In sustaining plaintiff's objections & refusing to allow
810 the witness Becker to testify in answer to the following questions asked by defendant's counsel: "State whether, during the *trial* he (Sabin) was superintendent in 1865, he was authorized by the defendant to keep any bank account in its name." 2d. "State whether, during the time that Sabin was superintendent during the year 1865 the defendant kept a bank-account in Colorado."

46th. In refusing to allow the defendant to prove by the witness Becker "that during the time that Sabin was the agent of the company in 1865 no bank-account was kept by either defendant or Sabin in Colorado in the name of defendant."

47th. In sustaining plaintiff's objection & refusing to allow the two letters of T. H. Becker to Joseph H. Werner of December 16th, 1868, and January 26th, 1869, to be given in evidence to the jury.

811 48th. In sustaining plaintiff's objections & refusing to allow the minute-book, or record of corporate meetings & proceedings of the defendant corporation, or any part of it, to be given in evidence to the jury.

49th. In sustaining plaintiff's objection & refusing to allow defendant to give in evidence to the jury the minute' & records of a corporate meeting held at the office of the company in New York on the 5th day of April, A. D. 1866, as recorded in the minutes and book of records of defendant.

50th. In sustaining plaintiff's objections, and refusing to allow defendant to give in evidence to the jury the record of a meeting held by the defendant at its office in New York on the 5th day of April, A. D. 1869, as recorded in the record of the minutes of the corporate proceedings, on page 31 of book of minutes offered.

51st. In sustaining plaintiff's objection & refusing to allow the defendant to read in evidence to the jury, from the records and
812 minutes of corporate meetings of the defendant, the records of a corporate meeting held at the office of the company in New York on the 18th day of April, A. D. 1865.

52nd. In sustaining plaintiff's objection & refusing to allow the witness Becker to testify in regard to the resignation of witness Sabin, on the 5th day of April, A. D. 1866, and refusing to allow witness Becker to answer the following question asked by defendant's counsel: "State whether his (Sabin's) resignation was accepted by the board of directors?"

53d. In sustaining plaintiff's objections and refusing to allow the witness Becker to testify as to whether the record-book of defendant showed a record of Sabin's resignation on the 5th day of April, A. D. 1866, and the acceptance of the resignation by defendant.

54th. In sustaining plaintiff's objection and refusing to allow the defendant to prove by the witness Becker that he was present at
813 a meeting of the stockholders of defendant, in the city of New York, on the 5th day of April, A. D. 1869, and what action was taken by the said stockholders at such meeting in regard to the claim of plaintiff.

55th. In sustaining plaintiff's objections, ruling out and refusing to allow the defendant to prove the following, a written offer to make such proof having been made by the counsel for the defendant:

"To prove by the witness Becker that he was an officer of the defendant, and that he was present at a meeting of the officers of defendant corporation on the 18th day of April, A. D. 1865, where George K. Sabin was appointed agent of defendant: that he was appointed by a resolution of the board of directors, and that his agency was a special and limited agency, & also that he (witness) was present and an officer of defendant at a meeting of its officers in New York on April 5th, 1866, and that on that occasion Sabin made a report in writing
814 and resigned his position as special agent of the defendant, and that his resignation was accepted by the defendant, and the treasurer ordered to pay his salary to date; also that the witness was present at a meeting of stockholders of defendant, held in the city of New York on the 5th day of April, 1869, and as president of defendant, presented to the stockholders the claim and account of plaintiff, and that action was at that time taken by the stockholders, and the whole affair repudiated by the defendant."

56th. In sustaining plaintiff's objection & refusing to allow the witness Becker to testify and answer the following question, asked by defendant's counsel: "State in whom of the corporation defendant the power was vested to contract debts or make payment of debts?"

57th. In overruling defendant's objection, & allowing plaintiff's counsel, on cross-examination, to examine witness Becker in regard to an affidavit for continuance made by witness in this case at the May term, A. D. 1872.

815 58th. In overruling defendant's objection and allowing plaintiff's counsel to ask, and witness Becker to answer, on cross-examination, in regard to the contents of an affidavit for continuance made by the witness at May term, A. D. 1872.

59th. In overruling defendant's objection & allowing plaintiff's attorney, in the cross-examination of the witness Becker, to ask, and the witness to answer, the following questions: "State whether you were a large stockholder at that time;" also in allowing counsel to ask & witness to testify as to the amount of witness'es interest in the defendant corporation.

60th. In overruling defendant's objection and allowing plaintiff's counsel to ask, and witness Becker to testify on cross-examination, in regard to mining and work carried on by witness in Nevada, and as to "Hammond Tunnel," &c., & as to business carried on by witness in no way connected with the Bates lode or property of the defendant.

816 61st. In overruling defendant's objection and allowing plaintiff's counsel, on cross-examination, to examine the witness Becker in regard to a letter written by witness to Sabin, bearing date April 8th, 1868.

62nd. In overruling defendant's objections and allowing plaintiff's counsel, on cross-examination, to examine witness Becker in regard to letter written by witness Becker to Sabin, bearing date January 19th, 1868.

63d. In overruling objections of defendant and allowing letters of Becker to Sabin of April 8th, 1868, & January 19th, 1868, to be given in evidence to the jury.

64th. In overruling defendant's objection and allowing counsel for plaintiff, on cross-examination of witness Becker, to examine the witness in regard to a letter written by witness Sabin, bearing date April 2d, 1867.

65th. In overruling defendant's objection and allowing letter
817 of Becker to Sabin of April 2d, 1867, to be given in evidence to the jury.

66th. In overruling defendant's objection and allowing counsel for plaintiff, on cross-examination of witness Becker, to examine witness in regard to a letter of witness to Sabin, of February 10th, 1868.

67th. In overruling defendant's objection and allowing letter of Becker to Sabin, of February 10th, 1868, to be given in evidence to the jury.

68th. In overruling defendant's objection and allowing plaintiff's counsel to ask, & the witness Becker to answer on cross examination, the following question: "At this time you were the owner of a majority of the stock, are you not?"

69th. In overruling defendant's objection and allowing counsel for plaintiff, on cross-examination of witness Becker, to examine and witness to answer in regard to letter of witness to president of plaintiff, dated January 1st, 1869, and as to witness's meaning in expressions in said letter by him used.

818 70th. In overruling defendant's objection and allowing plaintiff's counsel, on cross-examination, to exhibit to witness and examine him in regard to a letter, written in pencil, of which date had been altered, the letter purporting to have been written by witness to Sabin.

71st. In overruling defendant's objection and allowing counsel for plaintiff to ask, & witness Becker to give testimony, in regard to a conversation said to have been had between witness Becker and one Nichols, and allowing counsel to ask & witness to answer the following question: "State whether you told him (Nichols) that the company never had leased or rented their mine & never would?"

72nd. In overruling defendant's objection and allowing plaintiff's counsel to ask, & witness Becker to answer, the following question: "Did not you before you went east state to Charles B. Kountze that you were going to try and sell the ore to Hill, and try and settle their debt?"

819 73d. In sustaining the plaintiff's objection and refusing to allow defendant to prove by witness Potter that in 1868, when the debt in controversy was contracted, that the capital stock of plaintiff bank was $50,000 and no more.

74th. In sustaining plaintiff's objection and refusing to allow defendant to give in evidence to the jury the two promissory notes made by Sabin and given to plaintiff, each for the sum of $5,000, bearing date the 3d day of October, 1868.

75th. In sustaining plaintiff's objections and refusing to allow defendant to prove that the two notes of $5,000 each, made by Sabin and delivered to plaintiff, bearing date October 3 1, 1868, were cancelled by

the court at request of plaintiff's counsel prior to the commencement of the trial of this cause at the November term, A. D. 1872.

76th. In overruling defendant's objections and allowing the
820 plaintiff's counsel to read a part of the deposition of Augustus Kountze in rebuttal as claimed by plaintiff's counsel.

77th. In overruling defendant's objections and allowing counsel for plaintiff to ask, & the witness Charles B. Kountze to answer, the following question: "Did you hear M'r Becker testify that he notified you that the directors of the company repudiated the debt & refused to have anything to do with it?"

78th. In sustaining plaintiff's objection and refusing to allow counsel for defendant to ask, and the witness Charles B. Kountze to answer, the following question on cross-examination: "What do you say now? Were not the statements of account between the plaintiff and defendant sent to your brothers in New York, & at Omaha, too?" And, also, in refusing to allow the defendant to prove by the witness C. B. Kountze, as follows: "That not only was Becker authorized by plaintiff to call upon his (witness's) brother in New York, but that his brother in
821 New York was furnished with a statement of this account and authorized to represent the plaintiff there."

79th. In sustaining plaintiff's objection and refusing to allow the defendant to read in evidence to the jury the 126th cross-interrogatory and the answer thereto, in the deposition of George K. Sabin.

80th. The court erred in refusing to instruct the jury as prayed by defendant in instruction No. 1, which is as follows:

"1. If the jury believe from the evidence that George K. Sabin entered into an arrangement or agreement with the defendant in the city of New York whereby he was to come to this Territory, & if he so elected to do, he could enter into possession & work the mines of the defendant at his own expense, & not at the expense & on account of the defendant, & pay to the defendant a certain portion of the ore taken from the mine for the use of the mine, & pay himself & all the expenses of working
822 the mine from the balance of the ore taken from the mine; & that under the arrangement or agreement so made with the defendant, the said Sabin entered into & worked the mines of the defendant, then the relation existing between the said Sabin and the defendant was not that of principal and agent, but that of landlord & tenant, and is governed by the same law as in cases of working land for a share of the crops, and the said Sabin became the lessee of the defendant, and the said defendant is in no way liable for any sum of money borrowed by the said Sabin, & cannot be made liable without a special promise in writing made & signed by the defendant."

81st. The court erred in refusing to instruct the jury as prayed by defendant in second instruction by it asked, which is as follows:

"2d. If the jury believe from the evidence that George K. Sabin made an agreement or arrangement with the defendant whereby he was
822¼ to enter into the mines of the defendant & work & mine the same on his own account, & was to mine & deliver on the top of the ground all the first class or smelting ore, as rental or tribute for the use of the mine of the defendant, & was to receive no salary from the defendant for his services, but was to pay himself & all expenses of working the mine from the proceeds of the balance of the ore mined from said mines, & that the defendant was not to furnish any money for the working of said mines, & and that Sabin was to contract no debts charg'able to the defendant, but was to quit work on said mines whenever he could not pay all expenses & pay himself from the low

grades of ore, then the jury must find for the defendant, unless they further find from the evidence that the defendant, in this suit, after said debt was contracted by Sabin, assumed it & promised the plaintiff in writing to pay the same."

822½ 82nd. The court erred in refusing to instruct the jury as prayed by defendant in its 3d instruction by it asked, which is as follows:

"3d. If the jury find from the evidence that the defendant was & is a foreign corporation, organized and existing under the laws of the State of New York, & that George K. Sabin was its agent in the Territory of Colorado, they must find for the defendant, unless they further find, from the evidence, that the agent Sabin, by virtue of his agency under the provisions of the charter of the defendant, was clothed with the power of contracting debts by borrowing money in the name of the defendant, or, that a special authority was conferred by the defendant corporation upon Sabin to borrow money in its name & on its account, or that the plaintiff bank was authorized by the defendant corporation to loan money to Sabin on checks drawn by Sabin in its name, or that prior to Sabin's dealings with the plaintiff, Sabin had, in the name & on the

823 account of the defendant, borrowed money from other parties in the same manner, & that the defendant had, with full knowledge of the nature of the transaction, recognized debts so contracted by Sabin as its debts, & paid the same, & that the plaintiff had knowledge of such transactions on the part of Sabin, & the defendant prior to & at the time of its dealings with Sabin, or that the defendant, after the dealings of Sabin with plaintiff, with full knowledge of all the material facts, adopted the acts of Sabin in his dealings with the plaintiff & promised the plaintiff to pay in the debt contracted by Sabin."

83d. The court erred in refusing to give to the jury the 4th instruction as prayed by the defendant, which is as follows:

"4th. If the jury believe, from the evidence, that George K. Sabin was the mining agent or superintendent of the defendant in Colorado, then the court instructs you that, as such agent or superintendent,

824 Sabin had no power or authority, by virtue of such agency, to borrow money in the name of the defendant, & that the jury should find for the defendant, unless they further find from the evidence either that the defendant corporation invested Sabin with special authority to borrow money in its name and for its use, or that the defendant afterwards, with full knowledge of all the material facts, ratified & adopted the acts of Sabin in his dealings with the plaintiff in its name."

84th. The court erred in refusing to give to the jury the fifth instruction, as prayed by defendant, which is as follows:

"5th. The court instructs the jury that a corporation is bound by the contract & acts of its agent, so far as the agent acts within the scope of the authority actually conferred upon him by the corporation, but no further."

85th. The court erred in refusing to instruct the jury as prayed

825 by defendant in the 6th instruction by it asked, which is as follows:

"6th. If the jury find from the evidence that George K. Sabin was the agent of the defendant, & was employed by the defendant to manage its mines, & that he was instructed by the defendant to work the same so long, & only so long, as he could work the same and pay all expenses from the 2d & 3d class ores, & put aside the 1st-class ore, and to quit and abandon work when he could not do so, & that he was further instructed to contract no debts, then that the said Sabin was a special

agent of the defendant, acting under limited & circumscribed authority, & that the defendant is not bound by any of his acts exceeding the limits of the authority conferred upon him by the defendant."

86th. The court erred in refusing to give to the jury the 7th instruction, as asked by defendant, which is as follows:

826 "7th. If the jury believe from the evidence that George K. Sabin was the mining superintendent of the defendant, then that, as such superintendent or agent, he had no authority to borrow money in its name & on its behalf, & that the defendant can only be held liable upon proof that the board of trustees or directors of the defendant had conferred upon Sabin either a general authority to borrow money on the company's credit, or a particular authority to borrow from the plaintiff, by checks & overdrafts, or that the conduct of the company was such as to create a well-founded belief in the plaintiff that such general or special power had been granted, or that the acts of Sabin, although unauthorized, were subsequently ratified by the board of directors of the defendant."

87th. The court erred in refusing to give to the jury the 8th instruction, as asked by the defendant, which is as follows:

827 "8th. The court instructs the jury that there can be no ratification of unauthorized acts of another by silence or acquiescence, unless the party sought to be charged had full knowledge of all the material facts necessary to a complete understanding of the transaction, & that the burden of proving such knowledge in the possession of the party sought to be charged is on the party claiming such ratification, and therefore, if the jury believe from the evidence that the defendant corporation had no knowledge prior to the 16th day of April, 1869, when this suit was brought, that the money obtained by Sabin from plaintiff was employed & used in working the west half of the discovery claim, and claim number three west on the Bates lode, and in running the Douglas Mill, & in paying Sabin a pretended salary, and as hire for the use of his engine, while doing his own work, then that silence on the part of the defendant, & a failure to disavow or repudiate the demand of plaintiff, cannot be considered as any evidence of ratification on its part of the acts of Sabin in contracting the liabilities in question."

828 88th. The court erred in refusing to give to the jury the 9th instruction, as asked by the defendant, which is as follows:

"9th. The court instructs the jury that if they believe from the evidence that an arrangement was made between T. H. Becker, president of the defendant, & the officers of the plaintiff, whereby Becker was to submit the claim of plaintiff to the shareholders of the defendant at their annual meeting, & that the meeting was held in New York on the 5th day of April, 1869, & that this suit was commenced in this Territory on the 16th day of April, 1869, then that the jury are to consider these facts in determining whether the plaintiff had notice of the result of the meeting of the shareholders, & their disavowal or repudiation of the claim of the plaintiff at such meeting so held on the 5th day of April."

89th. The court erred in refusing to give to the jury the 10th instruction, as asked by defendant, which is as follows:

829 "10th. If the jury believe from the evidence that on the 16th day of December, A. D. 1868, T. H. Becker, the president of the defendant, communicated to his company in New York by letter the claim made by plaintiff against the defendant on that date to him, & received from the officers of the company in New York letters dis-

avowing & repudiating the transaction, & communicated such disavowal or repudiation to the officers of plaintiff, then that such communication of the disavowal or repudiation was notice to the plaintiff of the fact of such disavowal or repudiation on the part of the defendant, and that in determining whether or not such disavowal or repudiation was communicated to the officer or officers of plaintiff the jury will take into consideration all the evidence in regard to conversations had between officers of the plaintiff & the president of the defendant up to the 19th day of March, 1869, in regard to the president of the defendant going to New York, calling a meeting of shareholders of the defendant and laying the matter before them at the annual meeting in April, 1869, & trying to get them to assume it & assess the stock for its payment."

830 90th. The court erred in refusing to give to the jury the 11th instruction, as asked by defendant, which is as follows:

"11th. The court instructs the jury that silence on the part of the defendant after having been informed of the claim of the plaintiff, and failure to disavow or repudiate the claim when informed of its existence, do not of themselves constitute a ratification of the acts of Sabin, nor render the defendant liable to pay the debt; & that such silence & failure to disavow are at best but evidence to be considered by the jury in connection with all the other evidence on that subject in determining whether or not the defendant intended to adopt & ratify the acts of Sabin in contracting the debt in question."

91st. The court erred in refusing to give to the jury the 12th instruction, as asked by defendant, which is as follows:

"12th. The court instructs the jury that when the duties & powers of a corporation are created or regulated by the act of incorpora-
831 tion or the by-laws of a company, persons dealing with such officers are charg'able with notice of all the limitations and restrictions upon his authority contained therein, & the burden of proof is upon them to show that debts contracted by him are debts of the corporation."

92nd. The court erred in refusing to instruct the jury as prayed by defendant in the 13th instruction, by it asked, which is as follows:

"13th. The court instructs the jury that the plaintiff in dealing with the agent of the defendant was bound to inquire into the nature & extent of his agency; and if plaintiff failed to make such inquiries, and remained in ignorance of the real extent of the agent's authority, it is no excuse in law, and the want of such knowledge on the part of the plaintiff cannot prejudice the defendant in this suit."

93d. The court erred in refusing to give to the jury the 14th instruction, as asked for by defendant, which is as follows:

"14th. The court instructs the jury that if they find from the
832 evidence that George K. Sabin was the agent of the defendant, duly appointed and empowered to conduct & manage the business of mining at their mines in Colorado, that that alone would not authorize the agent to borrow money on the credit of the defendant, & that they must find for the defendant, unless they farther find from the evidence that the agent Sabin was specially authorized & empowered by the defendant to borrow money in its behalf, or that the defendant afterwards ratified & adopted the act."

94th. The court erred in refusing to give to the jury the 15th instruction, as asked by the defendant, which is as follows:

"15th. The court instructs the jury that, if they believe from the evidence that George K. Sabin was the agent of the defendant, & while

acting as agent borrowed the sum of money in controversy of the plaintiff, and expended the same in the business of the defendant, & in paying its debts, that the money so advanced by the plaintiff, though
833 so applied, created no debt against the defendant, and that the jury must further find from the evidence, (before they can find for the plaintiff,) in addition to the mere fact of the loan from the plaintiff to Sabin, & the application of the money for the benefit of the defendant, that the defendant had authorized the plaintiff to loan the money to Sabin or Sabin to borrow the money in controversy from the plaintiff, or had afterwards ratified & adopted the act."

95th. The court erred in refusing to give to the jury the 16th instruction, as asked by the defendant, which is as follows:

"16th. The court further instructs the jury that, if they find from the evidence that George K. Sabin was the agent of the defendant, duly appointed to work & manage its mine, and further find from the evidence that, as such agent, he had authority to contract debts in the name of the defendant for goods, supplies, & labor necessary in prosecuting the work of mining, that these facts alone will not warrant them in finding
834 for the plaintiff; that they must further find from the evidence that Sabin had a special authority from the defendant to borrow money on its behalf, or that the defendant has since ratified the act."

96th. The court erred in refusing to give to the jury the 17th instruction, asked by defendant, which is as follows:

"17th. The court instructs the jury, that in case of a revocation of a special or limited agency the law does not impose on the principal any duty of publishing or giving any general notice of such revocation or dissolution of such agency, & any omission to give such general notice will not render the principal liable for any acts done in the name of such principal, & with others than those with whom such principal had had dealings through such agent before such revocation or dissolution, even if such subsequent dealing by the pretended agent was done within the limits of such special power of the person who had be-
835 fore that time been such special agent, unless such special agency was constituted in writing, & the person who had been so constituted agent had been permitted to retain the writing so appointing him such agent, & by means of such written appointment had fraudulently held himself out as still being such agent, & by that means procured the money in controversy."

97th. The court erred in refusing to give to the jury the 18th instruction by defendant asked, which is as follows:

"18th. The court instructs the jury that, to prove a ratification of a contract made without authority from the defendant corporation, it must clearly appear from the evidence in the case that the defendant had full knowledge of such contract, & that such acts of defendant, relied upon by the plaintiff as a ratification, were intended by said defendant to relate to the performance of such unauthorized act."

98th. The court erred in refusing to instruct the jury as prayed
836 by defendant in the 19th instruction by it asked, which is as follows:

"19th. The court instructs the jury that even if they do believe from the evidence that George K. Sabin was the agent of the defendant, & was also authorized to draw checks in its name, & did in fact draw them in the name of the defendant & directed the same to the plaintiff when the defendant had no funds in the possession of the plaintiff against which said checks were drawn, & the officers of the plaintiff paid said checks out of the funds of the plaintiff, said acts of Sabin & also the

acts of plaintiff's officers in paying the same out of said funds of plaintiff were illegal acts, & were in violation of law, & the plaintiff is not entitled to recover against the defendant in this form of action."

99th. The court erred in refusing to give to the jury the 20th instruction asked by defendant, which is as follows:

837 "20th. The court instructs the jury that even if they do believe from the evidence in the case that George K. Sabin was the general agent of the defendant, duly authorized to draw checks in its name, & did in fact draw them in the name of the defendant & directed the same to the plaintiff when the defendant had no funds in the possession of the plaintiff out of which to pay the same, such drawing was an illegal act on the part of Sabin, for he could draw on the plaintiff only when defendant had funds there against which to draw & out of which to pay the checks so drawn; and if Goodspeed, as the cashier of the plaintiff, paid the checks so drawn out of the funds of the plaintiff, such payment was an unlawful appropriation of the funds of plaintiff by its officer, & was not a legitimate act of banking & not authorized, but was prohibited and made a crime by the laws of the United States under which the plaintiff was incorporated & derived all its power & authority to do a banking business. Therefore the plaintiff cannot recover in this action, for there is no law authorizing the plaintiff to waive a
838 crime & sue in an action of assumpsit for money by its officers paid out in violation of a statute of the United States; but if it is entitled to recover at all in an action of law, it must be in a special action on the case & not in assumpsit, for when property or money is obtained by committing a crime there can be no assumpsit, either express or implied, by law."

100th. The court erred in refusing to give to the jury the 21st instruction, as asked by defendant, which is as follows:

"21st. The court instructs the jury that if they believe from the evidence that Sabin, while acting as agent of the defendant or claiming to act as agent of defendant, by some arrangement with the plaintiff or some of its officers, & without the knowledge or authority or consent of the defendant, drew checks in the name of the defendant upon the plaintiff when there was no funds or money in plaintiff bank belonging to defendant out of which to pay said checks, & that some of plaintiff's officers paid such checks & charged the money so paid to the
839 defendant without its knowledge or consent, and that this suit was brought for money so obtained by Sabin from plaintiff by overdraft, then that such proceeding was a misapplication of the moneys of the bank by its own officers for which they & their sureties are liable to the bank, & a fraud upon the defendant in which the officers of the bank participated, & that the plaintiff cannot recover in this action from the defendant, but must look for redress to its officers & their sureties & those who participated in the transaction.

101st. The court erred in refusing to give to the jury the 22d instruction, as asked by defendant, which is as follows:

"22d. The court instructs the jury that when an agency is shown to have existed for any one purpose or business, & there is no evidence tending to show that it had not been terminated, the law never presumes that such agency existed for any other purpose, or extended to any other business, & therefore, even if you believe from the
840 evidence in this case that Sabin was at any time the agent of the defendant for working or superintending the working of the mines of the defendant, & with the funds provided by the defendant, you cannot from that agency either presume or infer that such

agency either existed for, or extended to, or in any way authorized Sabin to borrow money on the credit of the defendant even for the working of such mines. An agent appointed to work a mine, or superintend the working of mines, is not thereby authorized to borrow money on the credit of the owner of such mine to work the same. Before you can find for the plaintiff in this case you must be satisfied from the evidence—

"1st. That the money in controversy was borrowed in its name; also.

"2d. That the act of borrowing was done by Sabin in the exercise & also within the limits of the power conferred on him by the agency.

"3d. That defendant corporation ratified the act."

841 102d. The court erred in refusing to give to the jury the 23d instruction asked by defendant, which is as follows:

"23d. If the jury believe from the evidence that Theodore H. Becker wrote the letter of January 1st, 1869, directed to the president of plaintiff in his private capacity, & not as president of defendant, & refused to sign the same as president, then that the writing of the letter was his own private act, & not official, & nothing in said letter contained would be any more binding or obligatory upon the defendant corporation than the letter of any other stockholder, or the letter of a stranger."

103d. The court erred in refusing to instruct the jury as prayed by the defendant in the 24th instruction by it asked, which is as follows:

"24th. The court instructs the jury that although T. H. Becker was president of defendant, his private acts, declaration, & promise are no more binding or obligatory upon the defendant than the acts,

842 declarations, and promises of any other stockholder or stranger, & before the jury can find the defendant bound by any acts, declarations, or promises of Becker, they must find from the evidence—

"1st. That such acts were done, & declarations & promises made by Becker, as president of the defendant, in his official capacity, with the intention of binding the defendant by such acts, declarations, & promises.

"2d. That Becker, by virtue of his office of president of defendant, had, under the charter or by-laws of the corporation defendant, power to borrow money, and to bind the company by promising payment of money borrowed by others in its name by overdraft, & without its knowledge; or,

"3d. That the defendant corporation had specially empowered Becker to make the declarations and promises by him made, & that they were made for & on its behalf."

104th. The court erred in refusing to give to the jury the 25th instruction asked by defendant, which is as follows:

843 "25th. The court instructs the jury that the paying out of the money of a bank by its officers upon overdraft is a misapplication of the funds of bank by its officers, for which they & their sureties are liable to the bank, & a proceeding that cannot receive countenance in a court of justice so as to charge the money so paid to third parties who had no knowledge of, & did not participate in, the misapplication, nor receive the money so paid out."

105th. The court erred in refusing to give to the jury the 26th instruction as asked by defendant, which is as follows:

"26th. The court instructs the jury that, if they find from the evidence that Sabin was the agent of the defendant for the purpose of carrying on its mine & taking the ore from same & having it crushed and the gold taken out, then that Sabin had no right or authority, by virtue

of such agency, to borrow money in the name of the defendant, and the jury cannot find the defendant liable for money so borrowed by
844 Sabin, even if it was used in working the mine of the defendant, unless they further find from the evidence that Sabin had special authority from the defendant to borrow money in its name, or that defendant had subsequently ratified the act."

106th. The court erred in refusing to give to the jury the 27th instruction, as asked by defendant, which is as follows:

"27th. The court instructs the jury that, if they believe from the evidence that from and after the 16th day of December, A. D. 1868, the plaintiff in this case suffered no loss, and its status was not changed, and the defendant received no advantage by its failure to disavow the debt in question & repudiate it to the plaintiff, and that during the time from December, 1868, to April, 1869, when this suit was brought, the only act attempted to be done by the plaintiff was to impose this debt upon the defendant and render it liable to pay it, or get it to assume and promise to pay it, which can only be injurious to the defend-
845 ant, then, even if there had been no disavowal and repudiation of the debt by the defendant, the jury cannot presume a ratification by acquiescence and the neglect of the defendant to disavow the debt between the 16th of December, 1868, and the time of bringing this suit by the plaintiff."

107th. The court erred in refusing to give to the jury the 28th instruction, as asked by defendant, which is as follows:

"28th. If the jury find from the evidence that the plaintiff paid the checks of Sabin drawn by him in the name of the defendant when there was no money in plaintiff bank to the credit of the defendant, and that such course of dealing was continued for a long time, and the money in controversy was obtained in that way, and the plaintiff not only did not notify the defendant but kept the knowledge from the defendant, then that the plaintiff participated in the fraudulent acts of Sabin in creating the debt, and cannot recover in this action unless they find that
846 the corporation, with a full knowledge of all the facts, ratified the act of Sabin."

108th. The court erred in refusing to give to the jury the 29th instruction as asked by defendant, which is as follows:

"29th. The court instructs the jury that, if they believe from the evidence in this case that the plaintiff was at the time of the contracting of the debt in controversy a banking corporation under the laws of the United States, then it was limited by said laws to the business of banking, and the exercise of such incidental powers as are necessary to carry on the business of banking, as by discounting or negotiating promissory notes, drafts, bills of exchange, & other evidences of debt, as limited by said laws of the United States; and the advancing of money to pay checks drawn by Sabin as its agent, when defendant had no funds in the possession of the plaintiff out of which to pay the same, is not legitimate banking power or duty, and the plaintiff had no power
847 or authority under said law to advance its money to pay the checks so drawn, & therefore the plaintiff is not entitled to recover in this action for the money so advanced to pay such checks."

109th. The court erred in refusing to give to the jury the 30th instruction asked by defendant, which is as follows:

"30th. If the jury believe from the evidence that Sabin was not the agent of defendant, or that he was the agent, but exceeded his authority in borrowing money in the name of the defendant, and the defendant failed to disavow the act and repudiate the debt, then that such silence

and failure to disavow is not of itself a ratification on the part of the defendant; but it is a question whether such silence is a reasonable presumption."

110th. The court erred in refusing to give to the jury the 31st instruction, asked by defendant, which is as follows:

"31st. The court instructs the jury that, in case of a revocation
848 of a special or limited agency, the law does not impose on the principal any duty of publishing or giving any general notice of such revocation or dissolution of such agency, and any omission to give such general notice will not render the principal liable for any act done in the name of such principal, and with others than those with whom such principal has had dealings through such agency before such revocation or dissolution, even if such subsequent dealing by the pretended agent was done within the limits of such special power of the person who had before that time been such special agent, unless such special agency was constituted in writing, and the person who had been so constituted agent had been permitted to retain the writing so appointing him such agent, and by means of such written appointment had fraudulently held himself out as still being such agent and by that means procured the money in controversy."

849 111th. The court erred in refusing to give to the jury the 32d instruction, asked by defendant, which is as follows:

"22d. The court instructs the jury that even if they believe from the evidence in this case that Sabin has at any former time been the duly-appointed superintendent of the defendant, and has had full power and authority to work the mines of the defendant, even then such agency was not a general agency, but only a special or limited agency, and it did not authorize him to borrow money on the credit of the defendant."

112th. The court erred in refusing to give to the jury the 33d instruction asked by defendant, which is as follows:

"33d. If the jury believe from the evidence that George K. Sabin was the agent of the defendant, & exceeded the special and limited authority conferred upon him by the defendant in contracting the debt with the plaintiff, his acts, so far as the defendant is concerned, are mere nullities and in no way bind the defendant, and the plaintiff
850 cannot recover the money in controversy from the defendant, unless the jury further find from the evidence that plaintiff made due inquiries and used due diligence to ascertain from the defendant the extent of Sabin's authority, & that the plaintiff was misled by the defendant, & defendant held Sabin out as having the power and authority to contract debts and borrow the money in controversy for and on account of the defendant, or that the defendant has, since the contracting of the debt by Sabin, ratified & adopted the acts of Sabin in contracting the debt."

113th. The court erred in refusing to give to the jury the 34th instruction asked by defendant, which is as follows:

"34th. If the jury believe from the evidence that Sabin was not authorized to contract in defendant's name the debt sued for in this case, and that about the sum of seven thousand dollars, part of debt sued for, was used and applied by Sabin in payment to himself for
851 salary, as agent of defendant, & that he was not agent, & was not entitled to such salary, such amount so received by said Sabin must be deducted from plaintiff's claim, even if you find for the plaintiff, unless you further find that the defendant, with knowledge of the fact that Sabin received said seven thousand dollars for salary, adopted and ratified the whole debt claimed by plaintiff."

114th. The court erred in refusing to give to the jury the 35th instruction asked by defendant, which is as follows:

"35th. If the jury believe from the evidence that one-half of the alleged overdraft, for which this suit was brought, was expended & obtained for the purpose of mining claim No. 3 west, on Bates lode, by the witness Sabin, under some arrangement between himself & Becker, & that the defendant was not a party to the same, the amount so used must be deducted from plaintiff's claim, even if you should find for plaintiff."

852 115th. The court erred in refusing to give to the jury the 36th instruction asked by defendant, which is as follows:

"36th. If the jury believe from the evidence in this case that George K. Sabin was the mining superintendent or agent of defendant, then, as such superintendent or agent, he had no authority to borrow money in its name & on its behalf, & the defendant can only be held liable upon proof that the board of trustees or directors of the defendant had conferred upon Sabin either a general authority to borrow money on the defendant's credit, or a particular authority to borrow money from the plaintiff by checks & overdrafts, or that before such lending & advancing of the money in controversy the conduct of defendant corporation or company was such as to create a well-founded belief in the plaintiff that such general or special power had been granted said agent or superintendent, & that full knowledge of such acts of said
853 defendant had come to & was possessed by plaintiff before lending and advancing said money, and if the jury do not so find, then they must find from the evidence in the case that the act of Sabin, the pretended agent, although unauthorized in the first place, was subsequently, and with full knowledge of all the facts relating thereto, ratified by the board of directors or stockholders of the defendant, & acting in a meeting thereof duly in session. The acts of an officer of a corporation do not bind such corporation, unless such acts are within the scope of the authority and power of such officer."

116th. The court erred in refusing to give to the jury the 38th instruction asked by defendant, which is as follows:

"38th. The court instructs the jury that if they find, from all the evidence in this case, that the defendant is liable for the debt in controversy, or any part thereof, then they must deduct the amount of the two notes of five thousand dollars each at the dates thereof, and also
854 the amount of the said debt in controversy that was paid Sabin for or as his salary as superintendent or agent of defendant, and also the amount of money advanced to Sabin by plaintiff and by him (Sabin) expended in the development & working on claim number three west, and also on the west half of the Discovery claim on the Bates lode, as shown by the evidence in this case."

117th. The court erred in refusing to give to the jury the 39th instruction asked by defendant, which is as follows:

"39th. If the jury believe, from the evidence, that the witness Becker, on behalf of defendant, promised plaintiff to submit its claim to the defendant at its annual meeting in April, A. D. 1869, for ratification or repudiation, and that he did so submit it at such a meeting of defendant, held on the 3d or 5th day of April, & that the defendant rejected said claim, & that the plaintiff commenced this suit before the
855 expiration of a reasonable time in which Becker could notify it of the alleged repudiation, then the question whether Becker did or did not notify plaintiff of such fact is immaterial."

118th. The court erred in refusing to give to the jury the 40th instruction asked by defendant, which is as follows:

"40th. If the evidence in this case is so conflicting that you cannot determine which party has the right of the issue, you must find for the defendant."

119th. The court erred in giving to the jury, at the request of the plaintiff, the following instruction:

"1st. Whether Sabin was or was not the agent or superintendent of defendant is a question for the jury, to be determined by all the evidence before them."

120th. The court erred in giving to the jury, at request of plaintiff, the following instruction:

"2d. If the jury believe from the evidence that the defendant
856 did know that Sabin was doing business in its name and claiming to be its superintendent, & allowed said Sabin to continue to do business in its name, then the relation of Sabin to the defendant is the same as if he had been in the first place authorized to do business in its name."

121st. The court erred in giving to the jury, at the request of the plaintiff, the following instruction:

"3d. If the jury believe from the evidence that Theodore H. Becker was president of the defendant in the years 1867, 1868, & 1869, & that while he was president he had the active charge or management of defendant's affairs, & while acting in that capacity he recognized George K. Sabin as superintendent or agent of defendant, then the jury may take such recognition into consideration in determining whether Sabin was the agent of defendant or defendant had allowed him to assume that he was agent."

857 122d. The court erred in giving to the jury, at the instance of the plaintiff, the following instruction:

"4th. If the defendant did disavow the acts of Sabin in borrowing the money from the plaintiff, it was incumbent on the defendant to notify the plaintiff of said disavowal, and it is necessary for the defendant to prove the giving of such notice."

123d. The court erred in giving to the jury, at the instance of the plaintiff, the following instruction:

"5th. The court instructs the jury that, if they believe from the evidence that the defendant did notify Augustus Kountze that it repudiated the debt contracted by Sabin in its name, that such notification did not bind the plaintiff, unless they also find that said Augustus Kountze was an officer of the plaintiff, or its agent, to receive such notification."

124th. The court erred in giving to the jury, on its own motion,
858 , the following instruction:

"1st. If Sabin obtained money in the name of defendant from plaintiff, and had authority to that end, the transaction amounts to a loan to defendant, for which an action may be maintained by plaintiff. Whether money was obtained from plaintiff in name of defendant, & the amount of it, is the first question to be determined. And if you find that money was so obtained, the question then to be considered is whether Sabin had authority to pledge the credit of defendant in that manner."

125th. The court erred in instructing the jury, on its own motion, as follows:

"2d. Upon the testimony in this case you may assume that, prior to the 16th day of December, 1868, Sabin had no authority from defendant to borrow money in its name; for if he was agent of defendant during

the years 1867 & 1868, as claimed by plaintiff, the borrowing of
859 money was not within the powers conferred upon him; but if he obtained money in defendant's name & upon its credit, it was competent for defendant to ratify the act & assume the indebtedness incurred in its name."

126th. The court erred in instructing the jury, upon its own motion, as follows:

"3d. The question of Sabin's agency in the years 1867 & 1868 is only important in connection with the question whether defendant ratified the dealings mentioned by witnesses as having occurred between Sabin & plaintiff; for less evidence of ratification by the principal is required to establish the fact in the case where an agency exists & the agent has exceeded his authority, than is required in the case of an act done by one who has no agency whatever from the person whom he assumes to represent."

127th. The court erred in instructing the jury, on its own motion, as follows:

"4th. If you find from the evidence that Sabin was the agent
860 of defendant during the years 1867 & 1868 to operate its mines in Gilpin County, and that he obtained money from plaintiff which was expended by him in the business of defendant, and that such money was demanded by plaintiff or its officers from the defendant, then you should consider whether the defendant, with knowledge of the fact, assented to such demand and approved the act of Sabin in obtaining the money."

128th. The court erred in instructing the jury, of its own motion, as follows:

"5th. When an act has been done by an agent in excess of his authority, if the principal, upon being informed of all the facts, fail to disavow the agency within a reasonable time, his silence may be received as evidence of his assent to & acquiescence in the act done in his name.'

129th. The court erred in instructing the jury, on its own motion, as follows:

"6th. Therefore, if Sabin borrowed money from plaintiff in defendant's name, and the defendant was informed of such borrowing
861 through its president, & of the manner in which the money was expended by him, & failed to disavow Sabin's agency within a reasonable time after such notice, it is for you to say, as matter of fact, whether by such failure to disavow the alleged agency, the defendant assented to the act of borrowing."

130th. The court erred in instructing the jury, on its own motion, as follows:

"7th. If, in your opinion, the evidence discloses a promise by M'r Becker to pay any sum of money to plaintiff, the defendant is not bound by such promise. Evidence of interviews between officers of plaintiff & M'r Becker was received in order that you might determine whether a demand for money was made by plaintiff upon defendant, and whether M'r Becker was informed of the alleged dealings of Sabin with plaintiff, and not for the purpose of showing any promise on the part of defendant."

131st. The court erred in instructing the jury, upon its own motion, as follows:

862 "8th. If you find for plaintiff, you are at liberty to compute interest at the rate of 10 per cent. per annum upon the amount due from the 16th April, 1869, the date of the commencement of this suit, until the present time."

132d. The court erred in overruling the motion for a new trial of the case.

133d. The court erred in rendering judgment upon the verdict of the jury.

G. B. REED,
Att'y for Appellant.

(Endorsed:) G. D. No. 134, term No. 20. Union Gold-Mining Company, appellant, vs. Rocky Mountain National Bank, appellee. Assignment of errors. Filed February 11th, 1874. John W. Webster, clerk. G. B. Reed, att'y for app'l't.

And afterwards, on, to wit, the 13th day of February, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following pro-
863 ceedings were had in the above-entitled cause and entered of record, to wit:

THE UNION GOLD-MINING COMPANY, APPELLANT, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said appellant, by G. B. Reed and Hugh Butler, its attorneys, and the said appellee, by H. M. Teller, W. R. Gorsline, and J. Q. Charles, its attornies, also comes, and the motion of said appellant to withdraw the assignment of errors filed herein comes on to be heard, and the said appellee, by its attornies, being present and assenting thereto, it is ordered by the court that the said appellant may withdraw the assignment of errors herein.

And afterwards, on, to wit, the 16th day of February, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following
864 proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANT, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said parties, by their attorneys, G. B. Reed and Hugh Butler, for said appellant, and H. M. Teller, W. R. Gorsline, and J. Q. Charles, for said appellee, and this cause come on to be heard upon the motion of said appellant to retain the transcript of record herein for the purpose of making abstracts, and the said appellee, by its attorneys, assenting thereto, it is ordered by the court that the said appellant may retain the transcript of record for the purpose of making abstracts until the twenty-sixth day of February next ensuing this day.

865 And afterwards, on, to wit, the 2nd day of March, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supremecourt of the Territory of Colorado, the foll wing proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANT, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said appellant, by G. B. Reed, Hugh Butler, & E. Wakely, esq's, its attorneys, and the said appellee, by H. M. Teller, W. R. Gorsline, and J. Q. Charles, esqrs., its attorneys, also come, and this cause coming on to be heard, it is ordered by the court that said appellant file its argument by the incoming court on Monday, the ninth day of March next ensuing.

866 And afterwards, on, to wit, the 9th day of March, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANTS, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said appellant, by G. B. Reed and Hugh Butler, esqrs., its attorneys, and the said appellee, by H. M. Teller, W. R. Gorsline, and J. Q. Charles, esqrs., its attorneys, also comes, and this cause coming on to be heard, was submitted by appellants to the consideration and judgment of the court, and it is ordered by the court that said appellees file their arguments herein by Friday, the
867 thirteenth day of March next ensuing, and that said appellants file their reply thereto by Tuesday, the seventeenth day of March thereafter.

And afterwards, on, to wit, the 21st day of March, A. D. 1874, there was filed in the office of the clerk of the supreme court of the Territory of Colorado, by the defendant's attorneys in the above entitled cause, its joinder in error, which is in words and figures as follows, to wit.

TERRITORY OF COLORADO:

Supreme court of the Territory of Colorado, to the February term, 1874.

THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado, appellee, *vs.* THE UNION GOLD-MINING COMPANY OF Colorado, appellant.

And the said appellee, H. M. & W. Teller, J. Q. Charles, & William R. Gorsline, its att'ys, comes & says there is no error either in the record & proceedings or in giving judgment aforesaid in manner
868 & form as is above assigned by said appellant. Wherefore the appellee prays that the said judgment may be affirmed and the costs adjudged to it.

H. M. & W. TELLER,
J. Q. CHARLES,
W. R. GORSLINE,
Att'ys for Appellee.

132d. The court erred in overruling the motion for a new trial of the case.

133d. The court erred in rendering judgment upon the verdict of the jury.

G. B. REED,
Att'y for Appellant.

(Endorsed:) G. D. No. 134, term No. 20. Union Gold-Mining Company, appellant, vs. Rocky Mountain National Bank, appellee. Assignment of errors. Filed February 11th, 1874. John W. Webster, clerk. G. B. Reed, att'y for app'l't.

And afterwards, on, to wit, the 13th day of February, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following pro-
863 ceedings were had in the above-entitled cause and entered of record, to wit:

THE UNION GOLD-MINING COMPANY, APPELLANT, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said appellant, by G. B. Reed and Hugh Butler, its attorneys, and the said appellee, by H. M. Teller, W. R. Gorsline, and J. Q. Charles, its attornies, also comes, and the motion of said appellant to withdraw the assignment of errors filed herein comes on to be heard, and the said appellee, by its attornies, being present and assenting thereto, it is ordered by the court that the said appellant may withdraw the assignment of errors herein.

And afterwards, on, to wit, the 16th day of February, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following
864 proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANT, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said parties, by their attorneys, G. B. Reed and Hugh Butler, for said appellant, and H. M. Teller, W. R. Gorsline, and J. Q. Charles, for said appellee, and this cause come on to be heard upon the motion of said appellant to retain the transcript of record herein for the purpose of making abstracts, and the said appellee, by its attorneys, assenting thereto, it is ordered by the court that the said appellant may retain the transcript of record for the purpose of making abstracts until the twenty-sixth day of February next ensuing this day.

865 And afterwards, on, to wit, the 2nd day of March, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supremecourt of the Territory of Colorado, the foll wing proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANT, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said appellant, by G. B. Reed, Hugh Butler, & E. Wakely, esq's, its attorneys, and the said appellee, by H. M. Teller, W. R. Gorsline, and J. Q. Charles, esqrs., its attorneys, also come, and this cause coming on to be heard, it is ordered by the court that said appellant file its argument by the incoming court on Monday, the ninth day of March next ensuing.

866 And afterwards, on, to wit, the 9th day of March, A. D. 1874, the same being one of the regular days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANTS, *vs.* ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } No. 134. Appeal from district court, Jefferson County.

At this day comes the said appellant, by G. B. Reed and Hugh Butler, esqrs., its attorneys, and the said appellee, by H. M. Teller, W. R. Gorsline, and J. Q. Charles, esqrs., its attorneys, also comes, and this cause coming on to be heard, was submitted by appellants to the consideration and judgment of the court, and it is ordered by the court that said appellees file their arguments herein by Friday, the
867 thirteenth day of March next ensuing, and that said appellants file their reply thereto by Tuesday, the seventeenth day of March thereafter.

And afterwards, on, to wit, the 21st day of March, A. D. 1874, there was filed in the office of the clerk of the supreme court of the Territory of Colorado, by the defendant's attorneys in the above entitled cause, its joinder in error, which is in words and figures as follows, to wit.

TERRITORY OF COLORADO:

Supreme court of the Territory of Colorado, to the February term, 1874.

THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado, appellee, *vs.* THE UNION GOLD-MINING COMPANY OF Colorado, appellant.

And the said appellee, H. M. & W. Teller, J. Q. Charles, & William R. Gorsline, its att'ys, comes & says there is no error either in the record & proceedings or in giving judgment aforesaid in manner
868 & form as is above assigned by said appellant. Wherefore the appellee prays that the said judgment may be affirmed and the costs adjudged to it.

H. M. & W. TELLER,
J. Q. CHARLES,
W. R. GORSLINE,
Att'ys for Appellee.

(Endorsed:) G. D. No. 134; term No. 20. Rocky Mount. Na'l Bank vs. U. Gold M. Co. Joinder in error. Filed March 21, 1874. Jno. W. Webster, clerk.

And afterwards, on, to wit, the 18th day of February, A. D. 1875, the same being one of the regular days of the February term, A. D. 1875, of the supreme court of the Territory of Colorado, the following proceedings were had in the above-entitled cause, and entered of record, to wit:

UNION GOLD-MINING COMPANY, APPELLANT, vs. ROCKY MOUNTAIN NATIONAL BANK, APPELLEE. } Appeal from district court, Jefferson County.

At this day comes said appellant, by G. B. Reed, esq., and Hugh Butler, esq., its attorneys, and the said appellee, by H. M. Teller,
869 esq., W. R. Gorsline, esq., and J. Q. Charles, esq., its attorneys, also come, and this cause come on to be heard as well upon the transcript of judgment and other proceedings had in the said district court for the county of Jefferson, as also upon the matters herein assigned for error, and the same having been argued by counsel, upon due consideration thereof, it appears to the court that there is no error in the record and proceedings aforesaid nor in giving judgment aforesaid.

And it is ordered by the court that the judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect; that the opinion of the court when filed shall be recorded, and that the said appellee have and recover of and from the said appellant its costs and charges in this behalf expended to be taxed; and that it have execution therefor.

Justice Wells dissenting.

And afterwards, on, to wit, the 27th day of February, A. D. 1875, there was filed in the office of the clerk of the supreme court of
870 the Territory of Colorado the writ of error in the above-entitled cause, the original of which is hereto attached and made part of this record, and is in words and figures as follows, to wit:

871 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the Territory of Colorado, of the United States, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of the Territory of Colorado before you, between the Union Gold-Mining Company of Colorado and the Rocky Mountain National Bank of Central City, Colorado, a manifest error hath happened, to the great damage of the said Union Gold-Mining Company of Colorado, as by its complaint appears: We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings afore-

said being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according
872 to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the 27th day of February, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] JNO. W. WEBSTER,
Clerk of the Supreme Court of the Territory of Colorado.

872½ (Endorsed:) The Union Gold-Mining Company of Colorado, plaintiff in error, vs. The Rocky Mountain National Bank of Central City, Colorado, defendant in error. Writ of error. Filed February 27th, 1875. Jno. W. Webster, clerk.

873 And afterwards, on, to wit, the 2d day of March, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado the citation in the above-entitled cause, the original of which is hereto attached and made part of this record, and is in words and figures as follows, to wit:

874 THE UNITED STATES OF AMERICA:

To the Rocky Mountain National Bank of Central City, Colorado, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Colorado Territory, wherein the Union Gold-Mining Company of Colorado is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Hallett, chief justice of the supreme court of the Territory of Colorado, this twenty-seventh day of February, in the year of our Lord one thousand eight hundred and seventy-five.

MOSES HALLETT,
Chief-Justice.

On this 2nd day of March, A. D. 1875, personally appeared Hugh Butler before me, the subscriber, John W. Webster, clerk of the
875 supreme court of Colorado Territory, and makes oath that he delivered a true copy of the within citation to Henry M. Teller, one of the attorneys of the said Rocky Mountain National Bank of Central City.

HUGH BUTLER.

Subscribed and sworn to before me this 2nd day of March, A. D. 1875.

[SEAL.] JNO. W. WEBSTER,
Clerk Supreme Court Colorado Territory.

875½ (Endorsed:) The Union Gold-Mining Company of Colorado, plaintiff in error, vs. The Rocky Mountain National Bank, of Central City, Colorado, defendant in error. Citation. Filed March 2d, 1875. Jno. W. Webster, clerk.

876 And afterwards, on, to wit, the 17th day of April, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado, by the plaintiff in error, its bond in error, which said bond is in words and figures as follows, to wit:

Know all men by these presents, that we, Theodore H. Becker, of the county of Gilpin and Territory of Colorado, as principal, and Frederic A. Potts, of Pittstown, Hunterdon County, State of New Jersey, and Edward A. Quintard, of the city, county, and State of New York, and Samuel Bonnell, jr, of Elizabeth, Union County, State of New Jersey, as sureties, are held and firmly bound unto the Rocky Mountain National Bank, of Central City, Colorado, in the full and just sum of thirty-five thousand ($35,000) dollars, lawful money of the United States, for the payment of which sum, well and truly to be made to the Rocky Mountain National Bank, of Central City, Colorado, its successors or assigns, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents. Witness
877 our hands and seals, and dated this 27th day of March, A. D. 1875.

Whereas, on the third (3d) day of December, A. D. 1873, in the district court of the second (2d) judicial district of the Territory of Colorado, in and for the county of Jefferson, in a suit depending in said court between the Rocky Mountain National Bank, of Central City, Colorado, plaintiff, and the Union Gold-Mining Company of Colorado, defendant, judgment was rendered against the said Union Gold-Mining Company of Colorado; and whereas the Union Gold-Mining Company of Colorado afterwards appealed from said judgment of said court to the supreme court of the Territory of Colorado; and whereas the said supreme court of the Territory of Colorado did, on the eighteenth (18th) day of February, A. D. 1875, render a judgment in favor of the said Rocky Mountain National Bank, of Central City, Colorado, and against the Union Gold-Mining Company of Colorado, affirming the judgment of the said district court, and the said Union Gold-Mining Company of Colorado having obtained a writ of error from said supreme court of the Territory of Colorado to the Supreme Court of the United States to reverse the said judgment:

878 Now the conditions of this obligation is such that the said Union Gold-Mining Company of Colorado shall prosecute said suit to effect and pay said judgment and answer all damages and costs, and if it fail to make good its pleas, then the above obligation to be void, else to remain in full force and effect.

THEODORE H. BECKER. [SEAL.]
F. A. POTTS. [SEAL.]
EDWARD A. QUINTARD. [SEAL.]
SAM. BONNELL, JR. [SEAL.]

Witness:
CHARLES NETTLETON.

STATE OF NEW YORK,
City & County of New York, ss:

Frederic A. Potts, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder in the State of New Jersey, and is worth the sum of fifty thousand (000) dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

F. A. POTTS.

Subscribed and sworn to before me this 27th day of March, A. D. 1875.

Witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Colorado in New York.

879 STATE OF NEW YORK,
City & County of New York, ss:

Edward A. Quintard, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within the State of New York, and is worth the sum of fifty thousand *thousand* ($50,000) dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

EDWARD A. QUINTARD.

Subscribed and sworn to before me this 27th day of March, A. D. 1875, as witness my hand & official seal.

Witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Colorado in New York.

STATE OF NEW YORK,
City & County of New York, ss:

Samuel Bonnell, j'r, one of the subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder in the State of New Jersey, (of Elizabeth, New Jersey,) and is worth the sum of one hundred thousand ($100,000) dollars over all his debts
880 and liabilities, and exclusive of property exempt by law from execution.

SAM. BONNELL, JR.

Subscribed and sworn to before me this 27th day of March, A. D. 1875.

Witness my hand and official seal.

[SEAL.] CHARLES NETTLETON,
Commissioner for Colorado in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 27th day of March, A. D. 1875, before me, Charles Nettleton, a commissioner of the Territory of Colorado in and for the State of New York, residing in said city of New York, personally appeared Theodore H. Becker, Frederic A. Potts, Edward A. Quintard, and Samuel Bonnell, j'r, personally known to me to be the same persons described in and who executed the foregoing instrument, as parties thereto, who acknowledged to me that they had executed the same freely and voluntarily for the uses and purposes therein mentioned, and that the same was their free and voluntary act and deed.

881 In witness whereof I have hereunto set my hand and affixed my official seal this 27th day of March, A. D. 1875.

[SEAL.] CHARLES NETTLETON,
Commissioner for Colorado in New York,
117 *Broadway, N. Y. City.*

NEW YORK CITY, N. Y.,
April 1st, 1875.

The foregoing bond is such as I would approve as to sufficiency of

sureties, if given for a similar purpose in the supreme court of New York, if bondsmen were residents of this State, as required by our statute.

JNO. R. BRADY,
Justice Supreme Court, State New York.

The foregoing affidavits of Mess'rs Potts, Quintard, and Bonnell are presented to me as satisfactory evidence that they, as surities in the foregoing bond, are ample and good for the amount of such bond. I regard such affidavits as satisfactory evidence of such fact.

April 6th, 1875.

SAM'L BLATCHFORD,
District Judge of the United States for the Southern District of New York.

882 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, George F. Betts, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify that I am well acquainted with the handwriting of Samuel Blatchford, whose name is subscribed to the annexed approval of surities, and that the signature to the same is in his proper handwriting. And I do further certify that he was, at the time of signing the same—the said Samuel Blatchford was judge of the district court for the United States of America, for the southern district of New York.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said district court, seventh day of April, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of these United States the ninety-ninth.

[SEAL.] GEO. F. BETTS,
Clerk U. S. District Court for the Southern District of New York.

883 (Endorsed:) Taken & approved by me this 16 day of April, A. D. 1875. Moses Hallett, c. j. sup. court Col. Ter. Filed April 17th, 1875. Jno. W. Webster, clerk.

And afterwards, on, to wit, the 21st day of May, A. D. 1875, there was filed in the office of the clerk of the supreme court of the Territory of Colorado the opinion of the court, upon final hereing of the above cause, which is hereto annexed in accordance with amendment to rule 8th of the Supreme Court of the United States, to be transmitted herewith, and is in words and figures as follows, to wit:

Sup. court, Feb'y term, 1875.

UNION GOLD-MINING COMPANY
vs.
THE ROCKY MOUNTAIN NATIONAL BANK.

884 Hallett, C. J.:

Three trials, resulting in the same verdict, have been had in this cause, and the facts, so often determined upon substancially the same evidence, may now be accepted as well established.

We have, also, considered the rules of law which should govern the action, and have now to ascertain whether those rules were correctly ap-

plied at the last trial. Certain questions, considered and determined at former hearings, may be laid out of view, as they are not now in any manner open to investigation in this court. Such is the corporate existence of appellee, and its right to maintain an action for money loaned, exceeding in amount ten per cent. of its capital stock. Such, also, is the alleged misappropriation of the funds of the bank by its officers which, it was supposed, would render the transactions between the parties fraudulent, and thus defeat the action.

The authority of appellant to borrow money, not being expressed in its charter, was also denied; but we were of the opinion that, as
885 debts might be created, in prosecuting its enterprises, which the corporation would be legally bound to pay, money might be borrowed for the same purpose, if the corporation was not expressly prohibited from doing so. We further declared that the fact of Sabin's agency was material to be shown, in order that it might appear whether he had authority to borrow money, and, if he had no such authority, then as affecting the ratification of his acts by appellant.

Objections to the evidence offered to prove the fact, now again earnestly urged, were then discussed, and one conclusion was that, in the absence of better evidence to prove an agency, resort may be had to facts which tend to show recognition by the principal of the alleged agent's authority. That an agency may be proved by the habit and course of dealing between the parties is clear upon principle and authority. (Franklin vs. The Globe Insurance Company, 52 Mo., p. 461.)

The circumstance that Sabin was in possession of appellant's mine, carrying on business in its name, and was in communication with
886 its president, most certainly tends to prove the agency.

In addition to this, he testified that he was agent to appellant, and if his declarations during the continuance of the agency were drawn out, it was not for the purpose of establishing that fact, but to explain his dealings with the bank.

It is not contended that an agency may be proved by the declarations of the alleged agent; but, the fact being otherwise established, his declarations made during the continuance of the agency may be given in evidence to prove other facts. (Rowell vs. Klein, 44 Indiana, p. 291.)

The theory advanced in the opinions heretofore pronounced, that appellant must be liable upon its ratification of Sabin's acts, if at all, was adopted upon the trial below. It has never been claimed that, in virtue of his authority as superintendent of the mine, Sabin could borrow money in appellant's name, or that the promise of its president to pay the money obtained by Sabin would be binding upon appellant. But it was supposed that appellant, being advised of what had been done by its agent in its name, and failing to disavow his authority within
887 a reasonable time thereafter, might thereby manifest its assent to the transaction.

It was not, however, contended that appellant would be estopped to deny its liability upon any equitable principle, but merely that its failure to respond to appellant's importunate demand would be evidence of assent for the consideration of the jury. To repeat the arguments and again refer to the authorities upon which this conclusion was founded would serve no useful purpose.

But it is said that the law was not thus stated to the jury, inasmuch as they were told that if the defendant did disavow the acts of Sabin in borrowing the money from the plaintiff, it was incumbent on the defendant to notify the plaintiff of such disavowal, and to prove the giving of such notice.

This fact of the charge should be read in connection with another, in which the jury were advised to find as matter of fact, whether by its failure to disavow the agency appellant assented to the act of borrowing the money. So read, it means only that to make its disavowal effectual and prevent the inference which the jury were at liberty
888 to draw from its silence, appellant must not only deny the authority of the agent within a reasonable time, but notify appellee of the fact.

It was not said that appellant would be concluded by omitting to disavow Sabin's agency within a reasonable time after notice, or to give notice of its disavowal, but that such omission was evidence of acquiescence and assent, upon which the jury might determine the fact. The authorities cited in our former opinion abundantly support this as the correct principle, and in addition thereto reference may be made to Kelsey vs. The National Bank of Crawford County, 69 Pennsylvania St., 426. That was a case in which the cashier of a bank, with the knowledge and approval of the directors, (but without express authority for that purpose,) had offered a large reward for the detection of thieves who had stolen money from the bank. The plaintiff, having acted upon the proclamation of the cashier, sought to recover the reward, and was resisted upon the ground that the cashier had no authority from the bank to make the offer; but it was held that if the bank had notice of the offer and did not dissent from it, ratification and assent must
889 be presumed. It was also held that it was not necessary to give notice to the directors when sitting in their official capacity. If they were personally cognizant of the offer made by the cashier, it was their duty to call a meeting of the board and disavow the act if they were unwilling that the bank should be bound by it. It is true that the plaintiff had acted upon the proclamation of the cashier, and, therefore, the bank could not deny his authority without injustice.

But the rule laid down is quite as applicable to the case in which the silence of the principal is regarded as evidence of his assent to the act of the agent, which the jury may, or may not, accept as sufficient to prove the fact as to that in which the principal is estopped to deny the authority of the agent, upon the ground that in doing so he would perpetrate a fraud upon him, or upon a third party.

In both cases the principal must disavow the unauthorized act of his agent within a reasonable time, but the consequence of his not doing so is not the same in each. In one case the conduct of the
890 principal may be interpreted by the jury as evidence of his assent to what has been done in his name, and in the other he is estopped to deny the authority of the agent. In either case his conduct affords evidence of an intention to ratify, but it differs in degree and in the principle of law by which it is tested.

If, therefore, in the case cited, it was necessary that the bank should disavow the act of its cashier in order to avoid liability, in the case at bar it was equally necessary that appellant should repudiate the debt created by its agent, in order to avoid the inference which might be drawn from its silence. Notice to appellee of the disavowal was a necessary part of the act itself. In no other way could appellant break the silence which the law regards as affording evidence of an intention to ratify.

No error appears in this part of the charge, and other portions of it appear to be in harmony with the principles heretofore announced as governing the action.

Further support to our conclusion, that notice to the president
891 of appellant, and his undertaking to bring the matter before the board of directors, was sufficient to charge the corporation with notice of Sabin's dealings with the bank, may be found in the case last cited. In that case it was said that if the directors were personally cognizant of the offer made by the cashier, it was their duty to call a meeting of the board and disavow the act; so here the officers of the bank were seeking to obtain satisfaction of their demand against appellant through its president, and, as we have repeatedly declared, it was the duty of appellant to act upon the information thus obtained, if it desired to repel any presumption that might be drawn from its silence.

A kindred principle controls the objection that a portion of the work at the mine was upon property owned by Sabin and Becker, adjacent to appellants. The president of the corporation had full knowledge of the character of the work, and much of it was done by his direction. It is said that notice to an agent of a corporation of any matter under his management and control will effect the corporation, although
892 not actually communicated to the latter. The Pittsburg Railway Company vs. Ruby, 38 Indiana, p. 322.

The president was allowed to exercise general authority respecting the operations at the mine, and, according to what we have heretofore said in this case, the company must be responsible for his management. The pretence that this work was done for the purpose of improving the property owned by Sabin and Becker is not supported by the evidence. In one of his letters to Sabin, Becker, who was then president of appellant, directed him to extend his adits so that more ore could be reached, and this was done quite successfully, half the valuable ore being obtained from No. 3, west; upon that claim the vein was stoped out from sixty to eighty feet in height, a circumstance which is altogether inconsistent with the theory that the level was run for development only. In the west half of discovery claim but little was done, probably for the reason that it was unproductive, and, as to the whole, we were entirely correct in our last opinion in saying that the
893 mining done upon the property of the president and agent of the company was quite as much the act of the company as that done upon its own property.

Reconsideration of the authorities upon which we determined that proof might be offered to show that the money obtained from the bank was expended in the mine, and that it was beneficial to appellant, as affecting the question of ratification, has not shaken our conclusion, and we have nothing to add to what was said upon that point when the case was last before the court.

Two promissory notes made by Sabin in appellant's name, and payable to appellee, were offered in evidence by appellant for the purpose of showing payment of the amount therein specified, and also as a material part of Sabin's dealings with the bank; and it is urged that the court should have received them. That no portion of the debt was discharged by them is a proposition that it is not necessary to discuss, for it is well settled "that nothing can be justly considered as payment in fact but that which is in truth such, unless something else is
894 expressly agreed to be received in its place. The Kimball, 3 Wallace, p. 37.

Here there was no agreement that the notes should be accepted in payment of the sum for which they were given, or of any sum; and whether Sabin had or had not authority to execute them, the rule is the same. Nor is it perceived that they were necessary to explain the po-

sitions of the parties. Appellee was not seeking to charge appellant upon these notes, and they had been cancelled in open court at a previous term. If in giving them Sabin assumed to act as appellant's agent, he had already done so in creating the indebtedness to the bank, and this, at the utmost, was a promise in another form to pay an indebtedness which then existed. As appellee was not relying upon the notes, it is difficult to perceive how they could affect the question at issue.

The minutes of proceedings of two meetings of the board of directors and one meeting of the stockholders of appellant, offered in evidence upon the trial below, and excluded by the court, were not shown to have been made by the proper officer of the company. The
895 president of the corporation testified that he was present at the meetings, and that the record was correct: but the secretary, by whom the minutes were kept, was not called, nor was his absence explained.

Whether all of the facts recited in the minutes might be proved by the books of the corporation is a question of some difficulty, which it is not necessary to discuss. The most important of those facts was the rejection of appellee's demand and the disavowal of Sabin's agency, which is alleged to have occurred at a meeting of the stockholders held April 5, 1869. That such rejection and disavowal is a corporate act, of which the record would be the best memorial, is plain enough, and therefore oral evidence as to the proceedings of that meeting was properly excluded. Angell & Ames on Corporations, § 679. But proof that the book was kept by the corporation as a record of its proceedings was not a sufficient authentication without further evidence to show that the entries were made by the proper officer. Whitman vs. Granite Church, 24 Maine, p. 236.

896 Generally it appears to be necessary to call the clerk or officer who made the entries, if he is living, and if he is dead, to prove his handwriting. Stebbens vs. Merrill, 10 Cush., p. 27, and Union Bank vs. Knapp, 3 Pick., p. 196.

Obviously, a corporation relying upon its own record to establish its acts, with all the evidence of correctness at its command, should be held to strict proof, and that offered by appellant was clearly insufficient. Another reason for rejecting the proceedings of April 5, 1869, is that the affairs of the corporation were in the hands of trustees or directors, and the stockholders had no authority in the premises. Gashiveler vs. Willis, 3 California, p. 12.

Doubtless the stockholders might instruct the trustees as to the course to be pursued, but the power of the corporation was vested in the trustees, and they only could express its will.

In conclusion upon this point, it should be observed that all evidence tending to prove repudiation of the debt, or disavowal of Sabin's authority, by appellant or its officers, communicated to appellee or its officers, was before the jury, and if it was not accepted by them,
897 it was probably because it was strongly controverted by other testimony.

Examination of the jurors Nutt and Perrin disclosed pretty nearly the same facts, and we shall necessarily determine the competency of both of them in considering the objection to Mr Perrin, who sat at the trial. The record does not state whether the challenge was for principal cause or to the favor: but, as the ground of objection was that the juror had formed and expressed a disqualifying opinion upon the merits of the case, we may assume that it was for principal cause.

If we should regard the challenge as made to the favor, the decision

of the court upon the evidence as to the supposed bias or partiality of the juror would not be open to review in this court. Solander vs. The People, February term, 1873, and Sanchez vs. The People, 22 N. Y., p. 147.

Considered as a challenge propter affectum, the question is whether the juror had formed and expressed a fixed and determinate opinion as to the matter in issue, for if his opinion was conditional only, it
898 was ground for challenge to the favor. Pringle vs. Huse, 1 Cowen, p. 436, note.

And upon this point it is to be observed that the juror obtained his information mainly from one Evans, who sat as a juror at a former trial, and, when asked by the court whether Mr Evans' statement would have any influence upon his mind in the trial of the cause, he answered, "I think it would."

The question was then repeated in another form: "You think you would be governed, to some extent, by what he said?" To which the juror replied: "If he related to me the facts as he considered."

From this it is apparent that the juror had no opinion, or only such opinion as one gets from the casual statement of another, as to the truth of what he had heard: but, if such statement of facts was correct, he then had an opinion as to the justice of the case. This is a hypothetical or conditional opinion, such as any one will form when the facts out of which a controversy has arisen are stated in his hearing.

Formerly it was supposed that almost any report of the facts in the case would so affect the mind of one who heard it that he would
899 be incompetent to sit at the trial of the same case, but since newspapers and telegraphs have come into use as a means of spreading intelligence of all events, it has been found necessary to adopt a different rule, of the necessity the case at bar affords an excellent illustration. Twice tried in a small community, it is doubtful whether so many as twelve men who had never heard of the case could have been found in the county at the time of the third trial: and if they could have been found, it is more doubtful whether they would have been fit persons to decide the issue.

We now say that an opinion founded upon rumor or uncertain report, which has not taken firm hold of the mind, shall not disqualify, and our legislative assembly has said that in criminal cases no opinion whatever shall disqualify, if the court shall be satisfied that the juror will render an impartial verdict. 9 Sess., 94.

This rule relates more to the quality of the opinion than to the
900 evidence upon which it is based, for the real question is whether the juror stands indifferent between the parties. The general rule that he who has heard rumors and reports only is competent, and he who has had a full relation of the facts from witnesses or parties is disqualified, is intended as a guide to general results, and is not without exceptions. One man may form a fixed and decided opinion upon vague rumor, while another remains quite indifferent after hearing all the evidence.

Much depends upon the intelligence, candor, and mental constitution of the juror, his associations with and relations to the parties, and therefore the court where the cause is tried, having an opportunity to observe his manner and hear his answers to questions, can judge more correctly as to his fitness than any appellate tribunal. Much reliance is put upon his own estimate of his ability to resist any impressions that he may have received, and although it is entitled to great consideration it is not always controlling. One who confidently asserts that

he can disregard all that he has heard respecting a case may be
901 no better able to do so than another who is more regardful of his duty or less confident of his strength in resisting impressions which he has received.

It is urged that M'r Perrin was of the opinion that what he had heard from M'r Evans would affect his conclusions in the case, but, evidently, these expressions fell out of a scrupulous and tender care for the duty which he was called to perform. He was not acquainted with any of the officers of either corporation, and he felt no interest in the result of the controversy. He had not talked with any witness, nor had the credit of any of them been discussed in his presence. It does not appear that he was acquainted with any of the witnesses, and all the information that he had respecting the matters in issue was the gossip of social life concerning a notable cause. He was willing to discharge his duty as a juror, and he perfectly understood what that duty was. But for his fear as to the effect of the report which he had heard,
902 upon his mind, no one would doubt his competency, and, considering all the circumstances, it is impossible to believe that such report would create in his mind a fixed and determined opinion dangerous to the rights of the parties.

For an elaborate discussion of the views here suggested on this point counsel are referred to Jackson vs. Cane, 23 Grattan, p. 919.

Other questions presented in the briefs of counsel have been discussed in the first and second opinions filed in this cause, and, as we now find no error in the record, the judgment must be affirmed.

M'r Justice Wells dissenting.

(Endorsed:) 134—20. Union Gold-Mining Company vs. The Rocky Mountain National Bank. Opinion. Recorded. Filed May 21, 1875. Jno. W. Webster, clerk.

903 TERRITORY OF COLORADO, *ss:*

I, Jno. W. Webster, clerk of the supreme court of the Territory of Colorado, do hereby certify that the above and foregoing is a true, correct, and complete copy of the transcript of record, and that I have compared the writings annexed to this certificate and they are true copies of their respective originals, except the writ of error and citation, the originals of which are hereto attached, and are correct transcripts of all proceedings had in the supreme court of the Territory of Colorado now on file and remaining of record in my office in the suit of The *The* Union Gold-Mining Company of Colorado vs. The Rocky Mountain National Bank of Central City, Colorado.

I' testimony whereof I have hereunto set my hand and affixed the seal of the supreme court of Colorado Territory, at Denver, this 28th day of August, A. D. 1875.

[SEAL.]

JNO. W. WEBSTER.
Clerk Supreme Court Colorado Territory.

904 Clerk's fees for transcript: 1,671 folios @ 20, $334.20; certif' & seal, $1.00; total, $335.20.

Received payment of Theodore H. Becker.

JNO. W. WEBSTER.
Clerk Supreme Court Colorado Territory.

905 *Fee bill.*

G. D. No. 134, term No. 20. Record-book 1, page 436. Fee-book 1, page 315.

In the supreme court, February term, A. D. 1875.

UNITED STATES OF AMERICA,
Territory of Colorado, ss:

IN THE MATTER OF THE UNION GOLD-MINING Company of Colorado, appellant.
versus
THE ROCKY MOUNTAIN NATIONAL BANK OF Central City, Colorado, appellee.
} Appeal from district court Jefferson County.

FEES.

Bal. clerk's fees supreme court, unpaid, do'k't'ng suit, $5.00; index'g, 50; fil'g appeal, $2.00	7 50	
Ent. on 5 trial d'k, @ 25, $1.25	1 25	
Ent. app. 5 att'y, @ 25, $1.25; ent. 2 mo. & 3 ord., @ 50, $2.50	3 75	
Ent. final judg'ts, $1.00	1 00	
Recording opinion, 35 fo's, @ 25, $8.75	8 75	
Copy of final order, certif. & seal, $2.00; filing 8 papers, @ 25, $2.00	4 00	
Fee bill, & dock't'ng same	2 00	
Iss. writ of error to U. S. Sup. Court	2 00	
Total clerk's fees	30 25	
Paid by appellant, d'k't fee	10 00	
Bal. clerk's fees unpaid		$20 25
Fees for transcript of record U. S. Supreme Court, 1,671 fo's, @ 20, 334.20; certif. & seal, 1.00		335 20
Total clerk's fees unpaid		$335 45

Received pay't of—

SEPT. 28TH, 1875.

Received payment in full of the within of Theodore H. Becker.
JNO. W. WEBSTER, *Clerk.*

I hereby certify the foregoing to be a true copy from my fee-book of the balance of taxed bill of costs herein.
JNO. W. WEBSTER, *Clerk.*

906 Know all men by these presents that we, The Union Gold-Mining Company of Colorado & Frederick A. Potts, Edward A. Quintard, and Samuel Bonnell, jr., are held & firmly bound unto the Rocky Mountain National Bank of Central City, Colorado, in the full & just sum of thirty-five thousand dollars, ($35,000,) to be paid to the said Rocky Mountain National Bank, its certain attorney, successors, or assi., us, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly and severally, by these

presents, sealed with our seals & dated this fifteenth day of May, in the year of our Lord one thousand eight hundred & seventy-six.

Whereas lately at a term of the supreme court in the Territory of Colorado, in a suit depending in said court between The Rocky Mountain National Bank, plaintiff, & The Union Gold-Mining Company, defendant, a judgment was rendered against the said gold-mining company, & the said gold-mining company having obtained a writ of error, & filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, & a citation directed to the said na-
907 tional bank, citing & admonishing it to be & appear at a Supreme Court of the United States to be holden at Washington the second Monday of October, 1875:

Now, the condition of the above obligation is such that if the said Union Gold-Mining Company shall prosecute its said writ of error to effect, & answer all damages & costs with just damages for delay if it fail to make its said plea good, then the above obligation to be void; else to remain in full force & virtue.

THE UNION GOLD-MINING COMPANY OF COLORADO, [SEAL.]
By F. A. COTTS, *Secretary.*
F. A. COTTS. [SEAL.]
E. A. QUINTARD. [SEAL.]
SAM. BONNELL, J'R. [SEAL.]

Sealed & delivered in presence of—
DAN'L SEYMOUR.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

F. A. Potts, of Pittstown, New Jersey; Edward A. Quintard, of
908 No. 38 West 38th street, city of New York; Samuel Bonnell, junior, of Elizabeth, New Jersey, being severally duly sworn, do each depose and say that they are householders, and that they are worth the sum of seventy thousand dollars over and above their just debts and liabilities and property exempt by law from execution.

F. A. COTTS.
E. A. QUINTARD.
S. BONNELL, J'R.

Subscribed and sworn to before me this 15th day of May, 1876.
[SEAL.] JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 15th day of May, A. D. 1876, personally appeared before me F. A. Potts, secretary of the Union Gold-Mining Company of Colorado, F. A. Potts individually, Edward A. Quintard, and Samuel Bonnell, junior, who, being by me duly sworn, did depose that they are the persons described in and who executed the within bond, and acknowledged before me that they executed the same for the purposes therein set forth.

JOHN A. SHIELDS,
U. S. Commis. S. D. of N. Y.

909 Foregoing bond approved as to sufficiency of the sureties and as to form & manner of execution.
May 22d, 1876.

WARD HUNT,
Asso. Just. Sup. C't U. S.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The foregoing affidavit, signed & sworn to by Frederick A. Potts, Edward A. Quintard, and Samuel Bonnell, junior, and the foregoing acknowledgment made by said persons are presented to me as satisfactory evidence that said persons as sureties on the foregoing bond are ample and good for the amount of said bond, and that said bond is duly executed. I regard such affidavit and acknowledgment as evidence sufficient and satisfactory of such facts, and the bond is such as I would approve as to its due execution and the sufficiency of the sureties if the approval were within my judicial province.

SAM. BLATCHFORD,
District Judge of the United States for the Southern District of New York.

(Indorsed:) Sup. Court U. S. 1876, Octo. term. No. 393. The Union Gold-Mining Co., pl'ff in error, vs. The Rocky Mountain National Bank of Central City, Colorado. Additional supersedeas bond. Filed 23 May, 1876.

(Indorsed:) The Union Gold-Mining Company of Colorado, plaintiff in error, vs. The Rocky Mountain National Bank of Central City, Colorado, defendants in error. Error to the supreme court of Colorado Territory. Transcript.

(Indorsement on cover:) No. 157. The Union Gold-Mining Company of Colorado, plaintiff in error, vs. The Rocky Mountain National Bank of Central City, Colorado. Colorado Terr'y sup. court. Filed 6th October, 1875.

Supreme Court

OF THE UNITED STATES.

THE UNION GOLD MINING COMPANY OF COLORADO,
Plaintiff in Error,

against

THE ROCKY MOUNTAIN NATIONAL BANK OF CENTRAL CITY, COLORADO,
Defendant in Error.

Error to the Supreme Court of the Territory of Colorado.

STATEMENT OF CASE.

The plaintiff in error is a New York mining corporation, organized under the general laws of that State, and was defendant below. Defendant in error is a National Banking Association in Central City, Colorado.

The Bank sued the Mining Company in assumpsit for over-drafts on a bank account (Record, p. 5). A copy of the account is attached to the declaration (p. 7 *et seq.*)

Defendant pleaded the general issue and seven special pleas (pp. 16 to 19). The second special plea was afterwards withdrawn (p. 25). To the other special pleas plaintiff below demurred (pp. 19, 20), and the demurrers were sustained (p. 26).

On the general issue the Bank had a verdict and judgment. Defendant below made a bill of exceptions, which contains all the evidence.

The case presented on the trial was this:

Defendant below was a New York mining corporation, organized under general laws, and owned some mining property in Colorado. In April, 1865, defendant was working some of its mines, and had employed one George K. Sabin as its superintendent. His instructions were in writing—indicated the special work to be done, and required it to be done by contract. In April, 1866, Sabin resigned his position as superintendent, and thereafter the defendant ceased working its mines in Colorado, and had its property there stored, and directed its officers to loan its funds on undoubted collateral security (pp. 172–175). In October, 1866, Sabin proposed to defendant to himself work one of defendant's mines on his own account and at his own expense, and as a royalty therefor to pile up for defendant all the first quality of ore, reserving for himself the second and third quality ore.

Under this arrangement Sabin returned to Colorado in latter part of November or December, 1866, and took possession of the Company's mine and commenced to work it "on his own hook."

While Sabin was away the Company's property had been in care of a watchman, its books and papers had been removed from its office, its sign taken down, and the office rented.

Sabin borrowed some money of his friends and started work on the mine on his own account, in November or December, 1866.

In March, 1867, Sabin opened an account with the defendant in error, plaintiff below, in the name of defendant below. The account appears on page 7 *et seq.* of the record, and it is a suggestive feature of the account that it should have *commenced* with over-drafts; the first deposit of $443.75 on March 30th, apparently being made to balance the two checks that had been paid on the 18th and 25th March.

Sabin had no authority to open this account in the name of the defendant below, and no authority to borrow money for defendant by over-draft or otherwise.

The account ran on through 1867 and 1868, with a gradually increasing balance of over-draft, until on the 16th December, 1868, it amounted to over twenty-one thousand dollars.

Up to this day there is no question but that the opening of this account, and the incurring of this indebtedness by Sabin, were unauthorized by the defendant below. The Court so charged the jury in direct terms.

The only question for the jury, and the only question submitted to the jury, was whether, subsequent to that date and the 16th day of April, 1869, when the suit was commenced, the defendant had not ratified these acts of Sabin, and thus become responsible as if Sabin had been authorized.

In relation to ratification the evidence was this:

On the 16th December, 1868, Potter, a bookkeeper of the Bank, called on Becker, President of defendant. Becker had large mining interests of his own

in Colorado, and happened then to be in Central City.

Potter told Becker of the account Sabin had made, and asked for its payment or that it be secured.

Becker repudiated the debt, but on the assurance that it had been lawfully incurred, assured Potter that it was all right.

In further conversations with officers of the Bank, Becker was assured that the money overdrawn had been used by Sabin for the defendant below, and then promised to write to the company in New York and see what they would do about it. The Bank officers tried to get Becker to sign some contract or agreement to pay as President of the Company. Becker refused to sign anything as President, but finally, as an individual, signed a letter to the Bank wherein he recognized the over-draft as a debt of the Company. This was on the 1st January, 1869. Becker then wrote to the Company in New York enquiring whether any new arrangement had been made with Sabin, giving him authority to open a bank account in their name, and overdraw, and was answered in the negative, and so informed the Bank; and afterwards, at a meeting of the stockholders of the Company, the stockholders refused to acknowledge the debt or make an assessment to pay it, and the Bank was informed of it. The evidence as to the Bank being notified of this refusal, is somewhat conflicting as to details, but there can be no doubt it was so notified.

The Court charged the jury that Sabin had no original power; that silence by the Company after notice of what Sabin had done might be considered by the jury as evidence of a ratification of his acts.

Certainly there was no other evidence of ratifica-

tion in the case. The Bank had a verdict, and a motion for a new trial being overruled, judgment was entered, and an appeal to the Supreme Court of the Territory was affirmed, and a writ of error taken to this Court.

The evidence shows that there was no question as to the actual relations between the defendant below and the man Sabin.

Sabin himself, and the officers and records of the defendant, were the only witnesses on that point, and all the testimony agrees that Sabin was merely allowed to work the mine on payment of a royalty of the first class ore.

The only evidence produced by plaintiff below on that point, except Sabin's, was that of persons who said Sabin was agent because they saw him running the mine, and some letters of Becker addressed to him as Superintendent. In a word, assumptions of being agent were offered as evidence of the fact.

POINTS.

First.—The Court below erred in sustaining the demurrer to the special pleas.

These special pleas in substance averred that the plaintiff below was a National Bank with a capital of but $50,000, and by the Statute had no power to loan the defendant below the sum sued for, or any sum exceeding $5,000.

These pleas are founded on § 29 of the Act of 1864, 13 Stat. at Large, p. 108, being Sec. 5,200 of the Revised Statutes.

The Section provides that the total liabilities to a bank of any person shall not exceed one-tenth of its capital actually paid in.

The Court below, on the demurrer, held these pleas bad, on the ground that they were pleaded to the whole declaration, and could be a defense only to the count for money loaned (see report of this case, 1st Colorado Rep., 531); but the Court say that inasmuch as on another trial the question may be made on the evidence, they will decide on the merits of the plea as to the count for money loaned.

On this trial the question was raised on the evidence.

Defendant's question, p. 206, fol. 691, "What was the capital stock of your bank in 1867 and 1868? Objected to; objection sustained, and exception by defendant. Defendant offered to prove by the witness that in 1867 and 1868 the capital of the plaintiff below was $50,000 and no more. Objected to; objection sustained, and defendant excepted."

The Court below, in considering the question raised by these pleas, and this offer of evidence, argued that the Statute was rather in the nature of a direction to the officers of a bank than restrictive of its powers; also, that penalties had been provided in the Act for a violation of this provision, and therefore such loans were not void (see 1st Colorado, 531).

The language of the Act, however, is not directory. The language is: "The total liabilities to any association, of any person, etc., for money borrowed, shall at no time exceed one-tenth part of the amount of the capital stock of

such association actually paid in." The language is not that the directors, or even that the association, shall not *lend*—it is absolute prohibition that the liability of any person to a bank shall exceed, in this case, five thousand dollars.

In other words, the statute is conclusive that no one person or corporation owes to this bank, having a capital of $50,000, more than five thousand dollars.

Again, § 53 of the Act of 1864, being § 5239 of the Revised Statutes, provides no penalty for a violation of this section. That section provides the penalty of forfeiture of the franchise of any bank "whose *directors* shall *knowingly violate* or *knowingly permit* any of its *officers* to violate any of the provisions of the Act." In such forfeiture *knowledge* of the *directors* is an essential element, while in the 29th section R. S., 5200, no reference is made to knowledge or directors, and the existence of the indebtedness is prohibited.

The argument that, to hold the loan void would be to defeat the object of the Act, by destroying the very property it was intended to protect, is not sound.

The intent was absolutely to prohibit loans to one person beyond the ten per cent., because of the great danger of such loans. Holding them void in one case of course deprives that one bank of any recourse against that debtor, but it provides a rule which prevents any recurrence of such a case; while to say that a loan in excess is mere ground for forfeiture, provided it can be shown to have been made with knowledge of the directors, is so to emasculate the

provision of the statute that it becomes practically worthless as a protection.

In a very similar statute as to moneyed corporations in New York (1st R. S., p. 589, § 1, or 2d R. S., Banks, 6th ed., p. 297, § 1), prohibiting the making of loans to directors to an aggregate amount exceeding one-third of the capital stock, it was thought necessary to add the special clause that no securities taken for such loans should be invalid.

The general rule is familiar. A contract prohibited by statute is void, though the statute does not in express terms declare such contracts void (Story on Contracts, § 613). This doctrine is clearly stated by this Court in Harris *v.* Runnels, 12 Howard, 79.

True, in that case the Court avoided holding the contract void, but the reasons do not apply to the case at bar.

The soundness of the decision, too, may well be doubted. Two very able Judges dissented, and the case lays down no clear or definite rule. It was rather an illustration of the maxim that hard cases make bad law.

The rule that a contract prohibited is a contract void, is simple, clear, and certain. It attains the desired object. To fritter away such general principles on the occasion of hard cases is one of the most dangerous tendencies of Judge-made law. Certainty, which is the best element of the law, can only be found by a strict adherence to its clear principles. We cite a few illustrative cases:

Seneca Co. Bank *v.* Lamb, 26 Barb., 595,

and cases cited in the able opinion of Davis, *J.*

Miller *v.* Post, 1 Allen (Mass.) 434.

Libby *v.* Downey, 5 Allen, 299.

Fergusson *v.* Norman, 5 Bing. N. C., 76.

35 Eng. Com. Law Rep., 51; Ernest *v.* Nichols, 6 House of Lords Cases, 401.

Second.—The Court erred in admitting and rejecting evidence, and in charging and refusing to charge the jury in the following instances:

Before dwelling on specific errors, a brief reference to the general character of the case may not be out of place.

The Court charged, and the evidence, to say the least, showed that, whether the defendant below had *ratified* an unauthorized act was the only question submitted to or passed on by the jury. The whole evidence is printed in the record, and we submit that the record is absolutely bare of evidence of ratification.

When in January, 1869, the President of defendant below, while in Colorado, is informed of what was done, he discharges the man who had assumed to do the act. The defendant below was doing no mining and transacting no business in Colorado. It was merely a New York corporation owning mines in Colorado, but not working them.

At this time, then, the President of defendant below wrote to his Company, informing them of what had been done; and as soon as

time would allow, received reply that it was totally unauthorized.

Defendant's President says he communicated this reply to the plaintiff's officers. They deny it.

This—and testimony that the pretended agent used some of the money borrowed in defendant's mine, though working it on his own account for a stipulated roy lty—is the only evidence of ratification.

This was submitted to a jury, and although they found for the plaintiff, it is but an illustration of the soundness of the Lord Chancellor's remarks in Ernest *vs.* Nicholls, 6 H. Lords' Cases, 422: "It is a captivating argument for a jury, and jurymen are very often misled by it in these cases of joint-stock companies, but it is very likely to produce injustice—that the company has had the benefit of the plaintiff's goods, or service or money; whereas, for the purposes of contract, the company exists only in the directors and officers acting by and according to the deed," and is not liable "for the act of one or more of its members who are distinct persons by law."

Third.—The Court erred in overruling the defendant's challenge for cause to the juror Perrin. (Record, pp. 44, 45, 46.)

The Juror testified that he had formed and expressed an opinion, p. 45. That he formed it from conversations with persons who had been jurors on a former trial. One conversation was

but three weeks ago with a juror named Evans, and Evans must have been an hour telling him about it, p. 46. He thought what Evans told him would influence him as a juror.

The juror also said that the conversation had given him some prejudice, and that he was biased to one side.

There was not a word to modify this bald statement that the juror had in a long conversation talked over the case with a juror on a former trial, and had from that formed and expressed an opinion which he believed would influence him as a juror, and gave him a prejudice and a bias.

The Court below was mistaken as to the fact when in its opinion it stated that the record "does not state whether the challenge was for principal cause or for favor," p. 268. The record does state "Here the defendant challenged the juror Perrin *for cause*," p. 46, and the overruling of the challenge and exception.

We urgently request the Court to read the testimony of the juror Perrin, and compare it with the partial extracts made by the Court below in its opinion. The *testimony* shows an opinion formed not from hearsay or rumor or casual statement, but from an hour's conversation with one who had been a juror on a former trial, and who of course spoke from his investigation. If such an opinion will not sustain a challenge for principal cause, none can.

People *vs.* Mallon, 3 Lansing (N. Y.), 224.

Fourth.—The Court erred in excluding the questions on cross-examination to the witness Sabin, respecting the giving of the notes, and what was said on that occasion (pp. 81 to 84 inclusive, and pp. 86 and 91).

Sabin had testified, on direct examination, that he had opened an account with plaintiff in name of defendant, and that he drew checks on that account as agent. To prove his authority as agent, he had testified that he used the checks in paying for labor and material in working defendant's mine. Sabin had also testified that there was an indebtedness of defendant to plaintiff on the 1st October, 1868. That he did not remember the amount, and that it afterwards increased, and that the total indebtedness in December was some $23,000 (p. 55).

Now the testimony asked for by defendant, and excluded by the Court, was to the effect "that on the 3d October, 1868, this account stood on plaintiff's books a little over $10,000 against the defendant. That the account was then credited $10,000—the amount of certain notes that Sabin had assumed to give on account of defendant. That at that time Sabin told the plaintiff's cashier that he had no authority to give the notes, and no authority to run the Company in debt. That Goodspeed, plaintiff's cashier, still urged him to give the notes, and that he finally consented on condition that knowledge of the fact should be kept from Becker, defendant's President, who was then in town, which was agreed to, and knowledge thereof was kept from him."

It is no objection to the admissibility of this

evidence that the notes are not sued on, or that they were afterwards canceled.

The evidence tends to show that at this time, when the over-draft was but ten thousand dollars, this pretended agent Sabin in direct terms informed plaintiff's cashier that he (Sabin) had no authority to run the defendant in debt, and that he looked to the proceeds of the mine to pay the debt.

That being so, there could be no decent pretense that the subsequent over-drafts could have been made on account of defendant. That checks were drawn in defendant's name is nothing, if both Bank and Sabin knew, as thereafter they certainly did know, that Sabin had no authority to draw in the name of defendant, and was really only transacting his own business under defendant's name.

Surely, if the Bank did not intend to lend, defendant knew Sabin had no right to borrow for defendant really dealt with Sabin in defendant's name, it cannot recover in this action.

But this evidence was admissible as part of the *res gestae*. It was part of the dealing with this very account sued for—a part of the very transaction on which the suit is brought. The account itself on the books of the bank shows the credit of the notes, and the credit then erased, and defendant had a right to know all that took place in relation thereto, notwithstanding that the giving of the notes might be no payment.

Fifth.—The Court erred in excluding the answer of the witness Sabin, to cross-interrogatory 126, page 85: "Do you know from any officer of plaintiff, that the defendant in New York repudiated and denied the debt with plaintiff in January, 1869?"

To this question the witness said, that Mr. Goodspeed, plaintiff's cashier, came to him in January or February, 1869, and told him that Mr. Becker had received a letter from New York, utterly repudiating the debt, &c.

By turning to the charge of the Court on the trial, and to the fourth instruction given at the request of plaintiff (p. 221), it appears that the jury were instructed, that not only repudiation of Sabin's agency by defendant, but notice thereof to plaintiff, was necessary. (See also, opinion of Court below, p. 266, fol. 888.

Now, the excluded testimony showed directly that plaintiff had such notice. Not because Goodspeed, its cashier, said so, but because his saying so was in itself knowledge of the fact notice of which the Court says must be brought home to the bank, and the knowledge of the cashier is the knowledge of the bank.

Sixth.—The Court erred in excluding the answer to the 127th cross-interrogatory, p. 85. The testimony excluded was to the effect that the witness had had a conversation with plaintiff's President, and had fully stated the case to him, and that thereafter the President had told him that

he, Sabin, was liable for the amount. Surely defendant had a right thus to show the conditions under which the witness testified, and that it was his interest that the plaintiff should recover of the defendant that the witness might escape.

Seventh.—The Court below erred in admitting in evidence the statements of Becker, President of defendant. It was mere hearsay.

This point was raised by a great many exceptions throughout the trial.

On page 94, the witness, Goodspeed, plaintiff's cashier, was asked: "Did you have any conversation after you returned in January, 1869, with Theodore H. Becker, concerning this indebtedness, or with reference to this account?"

To this defendant objected, on the ground that Becker had no authority to bind the defendant. The objection was overruled; the defendant excepted, and the witness answered that he had such a conversation, and that Becker said that the debt should be paid.

A part of the answer was specially excepted to, fols. 300 to 301.

On the next page, also, the witness was interrogated about a conversation with Becker on the 19th March. The testimony was objected to, allowed, and defendant excepted (fols. 304 and 305).

The same kind of evidence was offered, objected to, allowed and exception on page 102

—top of page; also on balance of that page, and on page 103.

On page 102 the witness, Potter, testified to a letter Becker had written at the solicitation of Mr. Kountze, an officer of plaintiff. On his cross-examination, this witness testified that Kountze had proffered another paper, which Becker had refused to sign, and that he, Becker, was asked to sign this letter in *an official capacity, and refused*, p. 107.

Plaintiff then offered the letter in evidence. It was objected to by defendant, admitted, and an exception taken. The letter is printed on page 108.

In the testimony of Charles B. Kountze, p. 116, the question was also raised with this additional feature, that the witness stating the conversations of Becker with the witness was not even an officer of the plaintiff. This witness also says that he asked Becker to sign same paper and that he refused, and that he refused to sign the letter presented on page 108 as president, p. 117.

(The officers of plaintiff were Herman Kountze, President; Goodspeed, Cashier; and Potter, Assistant Cashier, p. 124.)

The evidence of the four witnesses, Kountze is filled with testimony and exceptions of this character, pp. 116, 118, 122, 129, and the conversations are testified to as taking place in Central City, Omaha and New York.

Indeed, substantially the whole of plaintiff's case rested on these conversations.

We submit that, in admitting them, the Court erred.

The general law under which defendant was organized, provided that its affairs should be managed by *a Board of Directors*, p. 224.

Becker himself, as president, had no power to borrow money of plaintiff (Fulton Bank *vs.* N. Y. & S. Co., 4 Paige, 127; Ins. Co. *vs.* Ins. Co., 7 Wend., 31), and having no original power, of course had no power to ratify (Hotchin *vs.* Kent, 8 Mich., 526).

What Becker said then was not admissible as proving ratification of the acts of Sabin. As Becker could not himself have done the act, he could not ratify its unauthorized doing by others.

The rule is familiar that the declarations of an agent are admissible only when and as they form part of the *res gestæ*; in other words, when they themselves constitute the contract or act to be proved. Properly speaking, they are not declarations or admissions at all, and whenever they are admissions only, are not admissible.

1st Greenleaf Ev., § 113.

Bowen *vs.* Bank of Newport, 18 New York Supreme Court Rep, 226, and cases cited.

Trustees *vs.* Ins. Co., 28 N. Y., 153–159.

In Luby *vs.* R. R. Co., 17 N. Y., 133, the Court said: The declarations "must constitute the fact to be proved, and must not be the mere admission of some other fact."

See also Bank *vs.* Bank, 60 N. Y., 278.

The Court, in its charge to the jury (p. 222), said that this evidence had been received

not to bind defendant by Becker's promise, but to show the demand made by plaintiff upon defendant for this money.

The very apparent answer to this excuse for the admission of such statements is, that the testimony was not so limited. The testimony, as given and allowed, is not restricted to showing a *demand* by plaintiff, nor would reading or hearing it in the least degree disclose any such intent.

Much of it, as on page 95 and pp. 102, 103, did not refer to any demand.

The evidence was clearly given as an admission binding on the defendant, and was doubtless so understood by the jury.

It was confessedly inadmissible for any such purpose, and the error is not cured by the attempt in the charge to limit its effect.

The poison had had too much effect before the antidote was administered.

Green *vs.* R. R. Co., 32 Barb., 25–34, and cases cited.

But it is equally inadmissible for the purpose of showing a demand.

Much of it shows no such demand, but is a mere statement by Becker of his views of the matter, *e. g.*, the letter.

That plaintiff demanded the money *of defendant* is totally immaterial, and if it were, the President had no authority to respond to the demand.

The utmost that could legally be claimed as to President Becker is, that he was a proper

person to receive *notice* of what plaintiff claimed Sabin had assumed to do.

The question then would be, did plaintiff give defendant notice of what Sabin had assumed to do so as to put upon defendant the burden of ratifying or repudiating what Sabin had done, and so that the *silence* of the defendant might be evidence of its ratification?

As Becker could be considered as agent only to receive *notice* and transmit it to the directors, what he (Becker) said on receiving such notice is wholly irrelevant.

It was not admissible to show that such notice was given to him. That must be proved by Becker himself, or by a witness who gave it or heard it given.

It was not admissible to show the action of defendant on the notice. It was, therefore, admissible for no purpose.

Nor can it be said that the charge of the judge took away the injurious effect of such evidence. The whole case is filled with it. To say to a jury, at the end of the trial, that such a mass of testimony, otherwise inadmissible, was admitted only to prove notice to Becker—a notice which no one denied—is absurd. The effect of its admission was there—the injury was done—the error committed—the charge did not cure it.

Green *vs.* R. R. Co., 32 Barb., 25–34, and cases cited.

Eighth.—The Court erred in allowing the witness Goodspeed, cashier of plaintiff, to testify that certain goods bought by Sabin from other parties were *charged* to defendant (p. 96, fol. 306.)

The error here would seem palpable.

Ninth.—The Court erred in admitting in evidence the so-called books of the defendant (p. 100, fols. 320, 321).

These books were admitted on the testimony of plaintiff's cashier, Goodspeed, that he made the entries in them as directed by Sabin. The name of defendant did not appear in or on the books. From their appearance, and from the entries, they could just as well have been the books of Sabin (p. 98, fol. 314; pp. 96, 97). Plaintiff stated that these books were offered to show that plaintiff's money had gone to defendant's use.

Clearly these entries, joined with the testimony of Goodspeed, excepted to on page 97, had no tendency to prove that fact, and were inadmissible for that purpose. They were mere hearsay of Sabin, stated in writing by Goodspeed, and indefinite in themselves.

Tenth.—The Court erred in excluding defendant's question to the witness Goodspeed as to what

other property than defendant's Sabin had been mining (p. 98).

Plaintiff had attempted to show Sabin's authority by showing him in possession of defendant's mines, and that he had used the borrowed money in working such mines. The whole of witness Goodspeed's direct-examination was to that effect. Defendant then had the right to show that Sabin worked other mines, and that the money went into them. The Court denied defendant that right, and therein erred.

Eleventh.—The Court erred in excluding on the cross-examination of plaintiff's witness Potter, evidence that in the summer of 1868 the plaintiff, by its officers, knew that Sabin was using the money borrowed from the bank in working mines belonging to Sabin himself and to Becker (p. 106, fol. 343).

If evidence to show that the borrowed money was used in defendant's mines was competent, clearly it was competent to defendant to show that it was not so used, but was used in other mines.

Twelfth.—The Court erred in excluding evidence that while Sabin was the agent of defendant, no bank account in name of defendant was kept in Colorado (p. 167).

Thirteenth.—The Court erred in excluding the letter of Becker, defendant's president, to Sabin of April 12, 1868, p. 185. It was a letter of instructions to Sabin. Plaintiff objected on the ground that it was a party's proving his own declarations (p. 185).

The letter is not a declaration. It is the actual *instructions* to Sabin.

Fourteenth.—The Court erred in refusing to allow defendant to prove on cross-examination of witness Charles B. Kountze that Augustus Kountze, in Omaha and New York, was authorized to represent plaintiff, and to receive notices for it in relation to this demand (p. 211).

The materiality of this testimony is apparent from the charge to the jury (p. 221, sub. 5). It was error to exclude it.

Fifteenth—The Court erred in its charge, and in its refusals to charge as requested by defendant.

a. Defendant asked the Court to charge "that there can be no ratification of the unauthorized acts of another by silence or acquiescence unless the party sought to be charged had full knowledge of all the material facts necessary to a complete understanding of the transactions, and that the burden of proving such

knowledge in the possession of the person sought to be charged is on the party claiming such ratification, and therefore, if the jury believe from the evidence that the defendant corporation had no knowledge prior to the 16th day of April, 1869, when this suit was brought, that the money obtained by Sabin from plaintiff was employed and used in working the west half of the discovery claim and claim numbered three west on the Bates lode, and running the Douglass mill, and in paying Sabin a pretended salary, and as hire for the use of his engine while doing his own work, then that silence on the part of the defendant, and a failure to disown or repudiate the demand of plaintiff, cannot be considered as any evidence of ratification on its part of the acts of Sabin in contracting the liability in question" (p. 214, 8th request).

The Court refused so to charge, and defendant excepted (p. 220, fols. 740 to 741).

This request substantially presents the point whether the use by Sabin of part of the money borrowed for his own purposes, and not on the defendant's property, was a material fact, which defendant had a right to be informed of before deciding whether to ratify.

That it was so in this case would seem clear.

If the money borrowed had all been expended on defendant's property and for defendant's benefit, defendant might concede to a kind of moral obligation to ratify; but if expended elsewhere, the moral obligation would be totally wanting. It would seem as

if no fact connected with the transaction could be more material.

b. Defendant asked the Court to charge that "if the jury believed from the evidence that on the 16th day of December, A. D. 1868, T. H. Becker, the President of the defendant, communicated to his company in New York by letter the claims made by the plaintiff against the defendant on that date to him, and received from the officers of the company in New York letters disowning and repudiating the transaction, and communicated such disavowal or repudiation to the officers of the plaintiff, then such communication of the disavowal or repudiation was notice to the plaintiff of the fact of such disavowal or repudiation on the part of defendant; and that in determining the fact whether or not such disavowal or repudiation was communicated to the officer or officers of plaintiff, the jury will take into consideration all the evidence in regard to conversations had between officers of the plaintiff and the President of the defendant up to the 19th March, 1869, in regard to the President of defendant going to New York, calling a meeting of the shareholders of defendant, and laying the matter before them at the annual meeting in April, 1869, and trying to get them to assume and assess the stock for its payment." The Court refused and defendant excepted (p. 214, 10th request).

It seems difficult to understand why this request was refused. If Becker told the truth

and did communicate to defendant's officers the contents of his correspondence, as exhibited p. 169 and 170, it certainly was a repudiation of the agency assumed by Sabin.

After the date of these letters, the whole aim of plaintiff's officers was to get Becker to lay the matter before the *stockholders* at the April meeting. The stockholders could, of course, overrule the directors; and the fact of such negotiations being pending was certainly proper to be considered by the jury on the question of knowledge by plaintiff of the refusal of the directors or officers to ratify.

c. Defendant asked the Court to charge:

"That to prove a ratification of a contract made without authority from the defendant corporation, it must clearly appear from the evidence in the case that the defendant had full knowledge of such contract, and that such acts of the defendant, relied upon by the plaintiff as a ratification, were intended by said defendant to relate to the performance of such unauthorized act." Court refused, and defendant excepted (p. 216, 18th request).

This refusal may be considered in connection with the charge that the Court did give: That "if the defendant did disavow the acts of Sabin in borrowing the money from the plaintiff, it was incumbent on the defendant to notify the plaintiff of said disavowal, and it is necessary for the defendant to prove the giving of such notice" (p. 221), to which charge defendant excepted.

By this refusal and charge, the Court held two propositions:

1st. That the defendant, by mere neglect or omission, might have blundered into a ratification without in the least intending it.

2d. That if defendant did disavow the agency, even most unequivocally, yet it was still charged, unless it gave notice of such disavowal to plaintiff.

There is a very large class of cases generally arising between principal and agent, where, owing to the course of business, the expectations of the parties, and the relation of the subject-matter, the principal, on being advised of the unauthorizod act of his agent, is bound forthwith to ratify or reject, and if he is silent it is equivalent to ratification.

The law of such cases is equivalent or analogous to the law of estoppel *in pais*. It is simply the demand of good faith. It is based on the correlative principle that the agent can make no profit from his principal's goods or business other than his regular commission, and to allow the principal to keep silent and await the result of the transaction, and then ratify it if profitable, and repudiate it if otherwise, would be unjust and unequitable.

The case of Haryard *vs.* Spears, 4 Keyes

Rep., 469, New York Court of Appeals, in which the opinion of the Court was given by Mr. Justice Hunt, then of that Court, is a good illustration of that class of cases. The agent had advised his principal of a certain act. The principal did not repudiate, but did not ratify and purposely kept silent, as he testified, in order to await events (see p. 483, citing Baily, *J.*, in Prinse *vs.* Clark, 8 Eng. Com. Law Rep., 80). "The principal has no right to pause and await the fluctuation of the market in order to ascertain whether the purchase is likely to be beneficial. He is bound, if he dissents, to notify his determination within a reasonable time."

The case cited by the Court below, of Kelsey *vs.* Bank, &c., 69 Penn St., 426 (Record, p. 266), is of a similar character. The bank having kept silent, and allowed plaintiff to act, could not without injustice have repudiated the act of its cashier.

Where, however, a right of election to approve or disapprove, or in other words a delay of decision as to approval or the contrary, would be attended with no advantage to the principal, or injury to the other party, no duty of immediate decision is imposed upon the principal—no inference of ratification can be drawn from silence, and clearly no obligation to notify the other party of the decision can exist.

Amory *vs.* Hamilton, 17 Mass., 109.

Dunlap's Paley, 172, note q.

Armstrong *vs.* Gilchrist, 2 Johnson's Cases, (A. G.,) 430, note.

See also Peters *vs.* Ballistier, 3 Pick., 495, where it was held that *commencing* an action of assumpsit was not a ratification, it being afterwards discontinued.

Wharton's Commentary on Agency and Agents, uses this language: "Permanent acquiescence in an agent's unauthorized act, is a strong proof of ratification, it being the duty of the principal to repudiate the act *if repudiation would avail to put parties dealing with the agent on their guard;* but mere knowledge on the part of the principal of an agent's unauthorized action will not make non-interference amount to a ratification, unless either the agent, or parties dealing with the agent, are thereby misled or prejudiced. On the other hand, whenever the usage of business requires a prompt reply, &c., &c."

In Walters *vs.* Monroe, 17 Md., 150, it was held that silence cannot amount to a ratification where the party did not know of the unauthorized use of his name on a note until after the note became due.

See also White *vs.* Langdon, 30 Vt., 599.
Fitzsimmons *vs.* Joslin, 21 Vt., 129.
Dougherty *vs.* Crowell, 3 Stockton, 201.
Story on Agency, § 258, note.

Livermore on Agency, vol. 1, p. 48, says:

"But the reception of a letter not contradicted, does not always amount to a ratification unless it is accompanied with circumstances capable of showing *an intention* to ratify."

"In the above case" (that of a son borrowing money for his father in his absence) "the relation of the parties, *conjunctionis favor*, joined to the silence of the father, caused a ratification to be presumed. In favor of commerce, the same presumption has been introduced among merchants.

"The principal who does not answer the letter by which his agents explain to him what they have done, is considered to have approved of their conduct, although they may have exceeded their authority."

Doubtless the trial Court in the case of Hayard *vs.* Speares, 4 Keyes, was technically wrong in refusing to charge, as asked, that there could be no ratification without an intention to ratify.

It should have so charged, and added that the receipt of the knowledge, and failure to disavow the act of the agent, was *conclusive* evidence of an intent to ratify. An unintentional ratification is a confusion of terms. Such evidence is conclusive on precisely the same ground that evidence making an *estoppel en pais* is conclusive.

The rule and its reason are well stated by this Court in Law *vs.* Cross, 1 Black, 539: "He cannot by holding his peace and ap-

parent acquiescence, have the benefit of the contract if it should afterwards turn out to be profitable, and retain a right to repudiate it otherwise."

Now, applying these doctrines to the case at bar—

Sabin had assumed to borrow money for the defendant, and to make certain use of it. When the whole thing was finished, the money borrowed, used, and payment not only demanded, but demanded with threats and violence from the agent, and after knowledge of it while being incurred, had been kept from the defendant by *plaintiff* and the agent; the defendant is informed of what had been done.

No benefit can accrue to defendant, and no injury to plaintiff, by defendant's non-action. Defendant owes *no duty* to any one, at once or at all, to ratify or refuse.

No fair inference of intent to ratify can be drawn from its silence, because there can be no object in speaking unless to ratify. Silence in such a case is refusal.

Defendant might well have asked a ruling that there was absolutely no evidence of ratification in the case. It was unnecessary to go so far. It only insisted that in this case no burden rested on it to *advise* the plaintiff that it did not ratify: that the fact of non-ratification was enough. No obligation rested on it to do more.

In such a case, too, mere silence does not show the intent to ratify.

The conjunctive circumstances referred to by Mr. Livermore as necessary to give it that effect are wanting (see also 27th request to charge).

d. The Court erred in submitting to the jury the question whether Sabin was defendant's agent.

There was not the slightest evidence in the case of such agency.

Sabin testified to his being agent in 1865, and to his being appointed but once, and that he took possession of defendant's mine in Spring of 1866, under an agreement to work the same for a royalty.

All defendant's officers testify to same thing. Sabin's resignation as agent, or superintendent, is in evidence. The acts he did, *e. g.* working the mine, &c., are as consistent with his actual relation as with that of agency. Surely he cannot ratify his own act, and nothing of his acting in the name of the defendant is known till December 16, 1868, when the whole proceeding is finished. The case is bare of evidence of agency.

The judgment should be reversed, and a new trial ordered.

WHEELER H. PECKHAM,
Of Counsel for Plaintiff in Error.

Supreme Court of the United States.

No. 157.

THE UNION GOLD MINING COMPANY, PLAINTIFF IN ERROR.

vs.

THE ROCKY MOUNTAIN NATIONAL BANK.

Brief and Points for Defendant in Error.

FIRST POINT

No assignment of Errors has been made in this case. It is a case specially calling for one. The record of 273 pages contains the writs, with the returns thereto, and all the testimony at length, with forty requests to charge the jury, and exceptions without number. This court and the defendant in error need to be directed through all this mass, to the matters upon which the plaintiff in error relies to reverse the judgment; much more than where the points of objection are clearly and shortly presented by a bill of exceptions, properly framed.

Treat *v.* Jamison, 20 Wall., 652.

SECOND POINT.

The action was *assumpsit*, to recover a large sum of money, alleged to have been loaned and advanced by the defendant

in error to the plaintiff in error. The plaintiff in error, by its 3d, 4th, 5th, 6th and 7th pleas, alleged that the Bank had a capital of $50,000 only; and, therefore, under the National Bank act, had not the competency to loan or advance to one party more than $5,000. To these pleas the Bank demurred and the demurrer was sustained. The action of the court was right for two reasons:

1. The pleas went to the whole matter of the declaration, which alleged the loan in divers sums, each much less than $5,000. Even if the law were as claimed, there was a right of action for the $5,000, which the Bank could legally loan to the plaintiff in error.

2. It is the rule of this court, early established and uniformly enforced, that all parties, whether natural persons or corporations, who receive the money of another, should repay it according to their contract.

Mr. Justice Hunt expressed it in The Mayor *v.* Ray, 19 Wall., 468, shortly, thus: "It is a general rule, applicable to all persons and corporations, and is a dictate of plain honesty, that, whoever, knowing the facts of the case, retains and uses money received by an agent for his account, cannot repudiate the contract on which it is received."

One rule by which to test the validity of pleas of this sort is that when the statute prohibits a contract or the making of a contract in a certain manner, in order to protect one of the parties, no action can be maintained. (Miller *v.* Post, 1 Allen, 434.) And all the cases cited on behalf of the plaintiff in error, fall within that rule, except Ernest *v.* Nicholls, 6 H. of L. Cases, 401. In that case the statute expressly provided that the contract should not be enforced.

When the case was before the Lord Justices under the name of Re the Sea, Fire and Life Assurance Co., *ex parte*, Port of London Co., 5 De G. M. & G., 465, the point on which it went off in the House of Lords was not raised, but it was ruled upon another point made upon the competency of the company to enter into the engagement. "When a purchaser has taken possession of and enjoyed

the subject-matter of a contract, it is, in my opinion, the duty of the court to make every reasonable presumption in favor of the validity of the contract."

A consideration of the Bank Act, and the place in it of the provision in question, shows very plainly that Congress never intended that a bank which was overgenerous or incautious enough to permit a party to become liable to it for an excessive amount, should be punished by a forfeiture of the entire debt, while he should enjoy his booty free from all liability.

Harris *v.* Runnells, 12 How., 79.
Heckner *v.* The Bank U. S., 8 Wheat., 338.
O'Hara *v.* Second National Bank, 77 Pa. St., 96.
Pangborn *v.* Westlake, 36 Iowa, 546.
Lindsey *v.* Rutherford, 17 B. Monr., 245.
Vining *v.* Bricker, 14 Ohio St., 331.
Fackler *v.* Ford, 24 How., 322.

Third Point.

Admitting the juror Perrin to sit as a juror, notwithstanding the challenge, was not error.

1. He was a competent juror. It appears from his examination that about three weeks before the trial, he talked for an hour with one Evans, who was a juror on a former trial of this case. Evans told Perrin what he had found out about the case, but did not comment on the testimony nor express any opinion as to the credibility of the witnesses.

Perrin testified that he would endeavor to do justice to all parties; that he would be governed, to some extent, by what Evans said, if he related the facts; and that he did not know that Evans' statement would balance anything against the evidence, if he sat as a juror, and he showed that he understood very well the duty of a juror.

He had an opinion, but it was hypothetical only.

Prindle *v.* Huse, 1 Cowen, 438.
Brown's Case, 2 Leigh, 778.

Moran's Case, 9 Id., 656.
Smith's Case, 6 Grattan, 696.
Jackson *v.* Cane, 23 Id., 919.
Castigan *v.* Cuyler, 21 N. Y., 134.
Sanchez *v.* The People, 22 Id., 823.
Bodine *v.* The People, 1 Denio, 308.
Freeman *v.* The People, 4 Denio, 34.
State *v.* Potter, 18 Conn., 173.

On a matter of this sort the utmost respect is due to the decision of the trial court. It sees the juror, and can judge better from his appearance and manner, together with his answers, than the appellate court can from the simple record of his examination.

It knows, too, the condition of the county, the circumstances of impanneling juries, and the probabilities of securing competent jurors.

Judge Hallett presided at the trial, and delivered the opinion of the Supreme Court of the Territory. In his opinion, at folio 899, he says:

"Formerly, it was supposed that almost any report of the facts in the case, would so affect the mind of one who heard it, that he would be incompetent to sit at the trial of the same case; but since newspapers and telegraphs have come into use, as a means of spreading intelligence of all events, it has been found necessary to adopt a different rule, of the necessity of which the case at bar affords an excellent illustration. Twice tried in a small community, it is doubtful whether so many as twelve men who had never heard of the case could have been found in the county at the time of the third trial; and if they could have been found, it is more doubtful whether they would have been fit persons to decide the issue."

2. The admission of a person to sit cannot be alleged for error when the objection is for favor.

Formerly, the competency of the person called to sit, when challenged for that reason, was tried by his fellows, and the question was of fact, so that error could not be alleged of their determination. Now, the trial is generally to the

court; but the nature of the question and the decision of it is unchanged.

Pringle *v.* Heese, 1 Cowen, 439, note.
State *v.* Potter, 18 Conn., 173.
Costigan *v.* Cuyler, 21 N. Y., 134.
Sanchez *v.* The People, 22 Id., 150.
O'Brien *v.* The People, 36 Id., 279.

The statute of Colorado has declared the rule in criminal cases to be, that no opinion disqualifies if the trial court shall think the juror can render an impartial verdict. (Opinion of Judge Hallett, p. 269 of the Record.)

This does not in terms apply to civil cases, but it shows the mind of the legislature.

Fourth Point.

The rulings of the court upon the objections to Sabin's deposition, in reference to the two notes which he gave the bank, and which were applied on the account, do not entitle the plaintiff in error to a new trial.

1. There was no error in the ruling.

The account was opened March 18, 1867, and was closed December 30, 1868. In October, 1868, the notes were given, being two in number, each for $5,000. They were signed "The Union Gold Mining Co., Geo. K. Sabin, agent." (P. 82.) Goodspeed, the cashier of the bank, asked Sabin to give them to apply on the overdraft. Sabin told him he had not authority to give notes of the company, consulted an attorney on the subject, and at last gave them, and the amount was passed to the credit of the company on the account. Afterwards the credit was erased, and on the second trial of the cause they were brought into court and canceled. (P. 104.)

It was understood by all parties that the notes were void for want of authority in Sabin to make them. Of course, they did not pay any part of the debt, and the bank could disregard them and sue for the money advanced, as if they

had not been given. This it did, and therefore they entirely disappeared from the transaction.

The testimony was sought, not for the purpose of showing a want of authority in Sabin to contract any debt against the company, but to claim the credit of the amount of the notes; and the answers, which were excepted to, do not disclose that the bank was at that time advised that Sabin was without authority to contract any debt, but only that he had not authority to draw drafts or sign notes in the company's name.

2. But even if there were error in excluding Sabin's answers, it was remedied by the testimony of Potter. He was permitted by the parties, without objection, to testify, and he did testify to every fact which Sabin's excluded answers contained. (See Record, page 104.)

3. The point was not saved by a proper exception.

Fifth Point.

The objection to the cross-interrogatories 126 and 127, p. 85, was, that they were not proper cross-examination, and were well taken, and it was not error to exclude them.

Sixth Point.

The evidence of Becker's statements and conversations was competent, and rightly admitted. The mining company was a New York corporation, and its board of directors met in New York city. Becker was its president, and came from New York to Colorado on the business of the company, and assumed charge thereof on his arrival. What his powers were, we are not informed, except by what he did. We know that he drew drafts on the treasurer of the company and applied the proceeds to pay Sabin his salary as superintendent, and other debts, discharged Sabin as superintendent, inquired into the state of the account with the bank, and entered into discussion with its officers about this debt. (P. 95.)

From these and other such like facts, as well as his official title, we are justified in assuming that he was the chief executive officer of the company. What he said about the debt, his promises about it, his recognition of its validity, and the company's obligation to pay it, were very important evidence.

This appears especially so in view of the questions at issue. The defendant ought to avoid its liability for this debt—not by saying that the bank had not advanced the money—not even by saying that the money had not been used in working its property, but by saying that Sabin, although formerly its agent and superintendent, was, at the time covered by this account, its lessee, and as such not authorized to borrow the money in its name.

What the president said in the way of recognizing the debt was very material in determining Sabin's authority.

The court, in its charge, limited this testimony to the matter of a demand by the bank for the payment of money. This was much more favorable to the defendant than anything it was entitled to.

Seventh Point.

The question put to Goodspeed, whether the supplies purchased by Sabin were charged to the defendant, was proper; but whether it was or not, he did not answer it. All he said was, "I want to explain that the only way I do know (whether they were charged to the defendant) was by seeing the bills made out by these parties." (See p. 96, folio 306.)

Eighth Point.

The defendant's books were rightly admitted. The circumstance that Goodspeed, the cashier of the bank, wrote them up did not affect their character. He did so from bills and vouchers furnished him for the purpose by Sabin. (Fols. 308 and 319.)

Ninth Point.

It was immaterial what other property than defendant's Sabin was mining, and the question to Goodspeed was properly excluded. The material fact was, that he knew Sabin was working other property than the Company's and that Goodspeed testified to.

Tenth Point.

There was no error in the refusal to permit Potter to answer the question, whether the bank knew that the claim No. 2 or 3 and the mill were being worked with the Company's funds.

It had appeared by the previous answer of the witness that the mill belonged to Becker, and that Sabin was using it in working the Company's mines, and that for its use Sabin was to work No. 2 or 3. These circumstances showed that the mill was being worked by the Company for its own use, and it was immaterial that it was being worked with its funds.

And as to the claim: the company owned No. 1 and No. 2. They were the mines which Sabin was working in the company's name. No. 3 belonged to Becker, and the work, whatever it was, being done by Sabin, was in payment for the use of the mill, so that it was immaterial that the company's money was being expended in working No. 3.

The testimony already given by the witness, disclosed the facts sought to be emphasized by the question, and the fact otherwise appeared. The court evidently saw an effort to direct the attention of the jury to an immaterial and irrelevant matter, and in the exercise of a just discretion, refused to permit it.

Eleventh Point.

It was not error to refuse to permit Becker to testify that, while Sabin was its agent in 1865, the defendant kept no bank account in Colorado.

It was, at the most, very remotely connected with the

question of Sabin's authority in 1867 and 1868. Whether the company, at that time, conducted its business by sending the product of the mine to New York, and returning to him the proceeds, as Becker says it did, in 1865, or sold the product in Colorado, realizing on it there, and for that purpose keeping an account in the bank, was quite immaterial.

It appears by the uncontradicted testimony of Potter, that the sale of the ore, and applying the proceeds to the expenses, was within the usual duties of a superintendent, so that the question of the mode of doing the business, concerned the defendant alone, and could not aid the determination of Sabin's agency.

Twelfth Point.

Becker's letter to Sabin of April 12, 1868, was properly excluded.

At most, it was a letter of advice only. But unaccompanied with an offer to trace a knowledge of its contents to the bank, it was incompetent.

Thirteenth Point.

It was immaterial whether Augustus Kountze was authorized to represent the bank in New York without more definitely fixing the time and nature of such authority.

Fourteenth Point.

It was not error to refuse the instructions to the jury asked for by the defendant.

They were forty in number. They cover over eight pages of the Record. Almost every one, was, for some reason, objectionable.

Fifteenth Point.

The instructions given by the court, as well upon the request of the defendants as of its own motion, gave the case

to the jury much more favorably than to the plaintiff, and the defendant has no ground of complaint.

SIXTEENTH POINT.

The case was fairly tried for the defendant, and justice was done. It has been tried three times with one result. No good could come from a fourth trial.

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